

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**FIRST APPEAL NO.262 OF 2019
WITH
CIVIL APPLICATION NO.989 OF 2019**

Janta Shikshan Sanstha, Dapodi,
Pune and Ors. .. Appellant

vs.

Mr.Ajit Subhash Kashid and Ors. .. Respondents

Mr.R.V.Pai with Mr.Aloukik R. Pai with Ms.Bina R. Pai with
Mr.Neuty N. Thakkar with Ms.Apurva Bhat with Ms.Nikita K.
Dharamshi i/b Mr.Dilip Bodke for the appellant

Mr.A.V.Anturkar, Sr.Advocate with Mr.Sandeep Phatak with
Mr.Ranjeet Shinde for the respondent nos.1, 2, 3 and 5

Mr.Yashwant D. Zope, respondent no.4, present in person

**CORAM : K. K. TATED, J
RESERVED ON : 25.07.2019
PRONOUNCED ON : 16.08.2019**

P.C.:

. Heard the learned counsel for the parties.

2 This court by order dated 17.01.2019 placed the matter for
final hearing at the stage of admission itself. Both the counsel
submit that entire papers and proceedings are already filed

before this court. Therefore, it is not necessary to file private paper book and / or to call R & P. Hence, by consent of both the parties, matter is taken on board for final hearing at the stage of admission.

3 By this First Appeal, appellants original opponents are challenging the judgment and order dated 09.02.2018 passed by learned Joint Charity Commissioner, Pune Division, Pune in Application No.15 of 2017 under section 41-E of the Maharashtra Public Trust Act, 1950 restraining the appellants from holding the meeting of General Body on 26.03.2017 or any time thereafter, without issuing the notices of the General Body meeting to all the confirmed teachers who have been confirmed in service in any of the branches of the trust prior to the issuing date of such notice. The learned Joint Charity Commissioner also directed appellant to hold the election of the Governing Council of the Trust, as expeditiously as possible, in any case within a period of two months from the date of the order, after updating the list of members under the supervision of the concerned Inspector of Charity Commissioner's office.

4 The learned counsel for the appellants submits that appellants Janata Shikshan Sanstha is running more than 15 to 16 education institutions in the State of Maharashtra. The aim and objects of the trust are as under:

“To propagate and promote Education in the society by making available the facility of education at

necessary places in the State of Maharashtra especially in Pune District. For that purpose -

- 1) To set up new Secondary Schools and to expand the old Secondary Schools.*
- 2) To start the colleges, if necessary*
- 3) To introduce the subjects like agriculture, business in the School and to encourage business inclination in the students.*
- 4) To montessories, primary schools, run gymnasiums wherever necessary and to create ideal citizens.*
- 5) To enhance the knowledge of students and villages through libraries, reading rooms.*
- 6) To organise Cultural programmes, Sports, tournaments, lectures and discussions and to make honest efforts achieve development of students and villagers.*
- 7) To make available the facility of poultry, dairy, press, store etc. and to improve the standard of living.*
- 8) At times, to undertake any work that would help in development of Sanstha.”*

5 The learned counsel for the appellants submits that as per the Constitution of Janata Shikshan Sanstha, classification of the member is as under:

- 1) Chief patron : Those giving of Rs.5001/-*

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- 2) Patron : Those giving of Rs.2001/- or more in
 - one or two installments, in a year.
- 3) Vice Patron : Those giving of Rs.1001/- or more in
 - one or two installments, in a year.
- 4) Donar : Those giving of Rs.501/- or more in
 - one
 - or two installments, in a year.
- 5) Life long member : Those giving of Rs.101/- or more in
 - one member or two installments, in a year.
- 6) Life member : The employees working to the post of
 - Head of the all the branches of the Sanstha
- 7) General Members : Permanent Teachers staff doing
 - service in any Branch of the Sanstha.

All these members shall have the right to cast their votes and to putforth their thoughts in the Annual General Meeting.

- 8) Well-Wishers : A] The persons who give the amount
 - less than Rs.101/-as donation.

B] Persons giving donations for specific reasons, giving help for the School Fund, giving financial assistance without giving actual amount for any

transaction.

The well-wishers shall not have a right to cast vote at the time of actual voting, but they may remain present for the meeting.

6 The learned counsel for the appellants submits that in the present proceeding, the Respondents filed Application under section 41-E of the Maharashtra Public Trust Act, 1950 (hereinafter referred to as the said Act) for temporary injunction restraining the appellants from holding the meeting of the General Body on 26.03.2017 or any time thereafter without issuing the notice of the General Body, to all the confirmed teachers, who have been confirmed in service in any of the branches of the Trust prior to 26.07.2016. He submits that the said Application was filed by the Respondent on 22.03.2017 with following prayers:

“a) Issue temporary injunction restraining the Opponents, their agents, servants, assigns, etc. from holding the meeting of the General Body on 26th March 2017 or any time thereafter without issuing the notices of the General Body meeting to all the confirmed teachers ho have been confirmed in service in any of the branches of the Opponent Society prior to 26 July 2016.

b) Issue temporary mandatory injunction directing the

Opponents to take the voting in the meeting of the General Body only by secret ballot, and not by show of hands.

c) Grant ad interim orders in terms of prayer clauses "a" and "b" above.

d) Award costs of the present application in favour of the Applicants.

e) Pass any other just and equitable reliefs in the interests of justice, in favour of the Applicants."

7 The learned counsel for the appellants submits that bare reading of the Application filed by the Respondent under section 41-E of the said Act shows that their main intention was to direct the Appellant Trust to prepare list of members of the Society as per Constitution before holding General Body Meeting. He submits that they filed their reply and opposed the said Application. He submits that they filed the Application below Exhibit 12 dated 24.3.2017 raising preliminary objection about the maintainability of the Application filed by the Respondent under section 41-E of the said Act, before the learned Joint Charity Commissioner, Pune Region, Pune. He submits that the relief claimed by the Respondent in their Application below Exhibit 41-E was not maintainable in the eyes of law and does not come within the purview of the said section. He submits that

they raised maintainability of the said Application on following grounds:

“2. That, the Applicants thereby seeking relief such as, 'to restrain the Opponents, their agents, servants, assigns, etc. from holding the meeting of general body on 26th March 2017 or any time thereafter without issuing the notices of general body meeting to all the confirmed teachers who have been confirmed in service in any of the branches of the Opponent Society prior to 26th July 2016 and further that, issue temporary mandatory injunction directing the opponents to take the voting in the meeting of general body only by secret ballot and not by show of hands', which is not maintainable in the eyes of law and not comes within the purview of the Sec. 41-E of M.P.T., Act, 1950. That, the said relief can't be sought either under the said provision ie. Sec.41-E of M.P.T., act, 1950 or other provisions laid down in the said Act and since, there is no provision in the said Act for estoppels to hold meeting the question of holding the meeting never arises and on this count only the said application is not maintainable and deserves to be dismissed with cost.”

“3. Without prejudice to the aforesaid contents it is humbly submitted that, the said Application is not maintainable due to non-joinder and mis-joinder of the parties to this proceedings and hence, needs to be dismissed with cost. That, the independent

application has been filed on record by the Opponents to that effect for adjudication of the same issue.”

“4. That, this Application has not been filed as per the Rule 25 AA of M.P.T. Rules, 1951 and therefore this Application is not maintainable and needs to be rejected with heavy cost. The provision u/rule 25 AA of M.P.T Rules, 1951 is totally violated.”

“5. Considering all the above fact and circumstances it is necessary to reject the said Application under reply. The Opponents submit that, whether this application is maintainable or not is crux of this proceeding and needs to be decided first. Considering this aspects the maintainability of this proceeding must be heard and decided first and the Opponents have good case and sky-scraping chances to success in the present proceeding Further, if the Application for maintainability is succeeded on its merit the valuable time of this Hon'ble Authority will be saved.”

8 The learned counsel for the appellant submits that the learned Charity Commissioner without considering the objection raised by them, decided the Application directing appellant to hold the election of the Governing Council of the Trust within stipulated time. He submits that Joint Charity Commissioner failed to consider the scope of section 41-E of the said Act which

reads thus:

“1) Where it is brought to the notice of the Charity Commissioner either by the Deputy or Assistant Charity Commissioner through his report or by an application by at least two persons having interest supported by affidavit,—

(a) that any trust property is in danger of being wasted, damaged or improperly alienated by any trustee or any other person, or

(b) that the trustee or such person threatens, or intends to remove or dispose of that property, the Charity Commissioner may by order grant a temporary injunction or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of such property, on such terms as to the duration of injunction, keeping an account, giving security, production of the property or otherwise as he thinks fit.

(2) The Charity Commissioner shall in all such cases, except where it appears that the object of granting injunction would be defeated by delay, before granting an injunction, give notice of the facts brought to his notice to the trustee, or the person concerned.

(3) After hearing the trustee or person concerned and holding such inquiry as he thinks fit, the Charity Commissioner may confirm, discharge or vary or set aside the order of injunction or pass any other

appropriate order,

(4) A trustee or a person against whom the order of injunction or any other order under this section is passed may, within ninety days of the date of communication of each order, appeal to the Court against such order.”

9 The learned counsel for the appellant submits that bare reading of section 41-E of the said Act clearly shows that Charity Commissioner can take appropriate steps to protect the trust property. He submits that in the case in hand, the main contention raised by the Respondent in their Application u/s 41E of the said Act before the Joint Charity Commissioner was to restrain the appellant from holding the meeting of the General Body on 26th March, 2017 or thereafter without following Constitution of trust. He submits that the learned Joint Charity Commissioner erred in accepting the submissions made by the Respondent, directing appellant to hold the election in particular time. On this ground itself, order passed by Joint Charity Commissioner is required to be set aside.

10 The learned counsel for the appellants submits that direction given by the Joint Charity Commissioner by impugned order is against justice, equity and good conscience and same is required to be set aside. In support of this contention, he relies on the judgement in the matter of ***Shakil Musa Patel and another vs. Dilipsing Pratapsing Patil and others***¹. He submits that in

1 2013 SCC OnLine 937

this authority, Hon'ble High Court held that Deputy Charity Commissioner under section 41-A of the said Act, cannot direct the parties to decide the legality, validity and correctness about enrolment of members. He submits that in this authority, Hon'ble High Court held that, those direction can be passed by the Deputy Charity Commissioner under section 22 of the said Act only. He submits that powers of authority described in the said Act Sectionwise. He relies on paragraph 10 and 19 of this authority which reads thus:

“10. I have heard learned counsel for rival parties. I have gone through the entire record and proceedings. I have gone through the judgments and orders recorded by all the Courts below. I have given opportunity to the counsel for rival parties before me to address on the issues also on facts, since I made it clear that I was inclined to exercise powers U/Sec. 103 of the C. P. C.. Accordingly Mr. Dhorde, and Mr. Shah, the learned senior advocate made their submission. Upon hearing the counsel for the parties, I frame the following substantial questions of law :

Substantial Questions of Law :

i) Whether the Jt. C. C. Nashik having decided the substantive proceedings about dispute amongst the trustees in Appeal Nos. 86/2001 and 87/2001 on 28.03.2002 by common judgment categorically

negotiating the claim for enrollment of new members by both the rival groups; and said common judgment being under challenge in applications U/Sec. 72(1) of the Trust Act before the District Court; within his full knowledge; acted with illegality and judicial impropriety in passing order dated 07.05.2003 in Application NO. 15/2002 U/Sec. 41A of the Trust Act and holding diametrically opposite the issue about newly enrolled members by approving members of Shakil Musa Patel's group and rejecting members of Deelipsing Patil's group?

ii) Whether the order dated 07.05.2003 in Application No. 15/2003 U/Sec. 41A of the Trust Act and the interlocutory orders therein dated 30.07.2002 and 02.09.2002 have any binding effect of adjudication of disputed questions about the new enrollment of members by both the rival groups?

iii) In the facts and circumstances of the case of the lis, in the present case, whether the District Court acted without jurisdiction in entertaining application U/Sec. 72(1) of the Trust Act along with other applications arising out of common judgment dated 28.03.2002 in Appeal No. 86/2001 and 87/2001 passed by the Jt. C. C. Nashik and by setting aside the said order dated 07.05.2003?

iv) Whether merely because the District Court committed a factual error on one aspect about newly enrolled members, this Court should remit the matters to the District Court or whether this Court in exercise of power U/Sec. 103 of the Code of Civil Procedure should adjudicate the controversy even on facts?

v) Which is the forum in the scheme of the Trust Act 1950 for decision of the issue about the legality, validity and correctness about the enrollment of members and under which provision?

ANSWERS :

i) Yes.

ii) No.

iii) No.

iv) Remand is not necessary, since, this Court invokes powers U/Sec. 103 of the C. P. C.

v) The Deputy Charity Commissioner/Assistant Charity Commissioner U/Sec. 22 of the Trust Act only.”

“19. The aforesaid provision of Sec. 22 of the Trust Act is in the nature of adjudication of change report in

respect of various changes which occur in the affairs of the trust and functioning of its managing committee. The jurisdiction of the Civil Court is barred by the provisions of the Trust Act. The competent forum to decide the integral and ancillary issue of membership under said special law namely the Trust Act 1950 must, therefore, be held to be the Deputy/Assistant Charity Commissioner, who conducts proceedings U/Sec. 22 of the Trust Act. In the instant case, I have already confirmed the finding recorded by the District Court in his impugned judgment dated 24.01.2013 that the enrollment of new membership by both the groups is illegal and that was obviously from the proceedings that emanated from the proceedings U/Sec. 22 in respect of change reports of the trust and hence I answer question Nos. 5 accordingly.”

11 The learned counsel for the appellant also relies on the judgment of this court in the matter of ***Mr. Shahid Javed Maniyar & Anr. vs. Dr. Sagir Munirkhan Sarguroh & Ors.***² He relies on paragraph 10 which reads thus:

“10) The moot issue, however, remains as to whether the directions issued by the learned Joint Charity Commissioner could have been issued in exercise of the powers conferred by Section 41A of the said Act. It is trite, as held in numerous Judgments of this Court that

² 2015(2) ALL MR 296

the power conferred by Section 41A of the said Act is an administrative power, which has to be exercised in the interest of the Management of the Trust and its finances. The said provision has been incorporated by way of an amendment to the said Act in the year 1985 so as to aid the power of the Charity Commissioner, which has been conferred by Sections 31 to 41 of the said Act in respect of the Management of the Trust. In the instant case, the learned Joint Charity Commissioner, as can be seen, has entered into an adjudicatory process in respect of the voters list and thereafter has issued the directions as contained in clause (6) of the operative part of the impugned order.”

12 The learned counsel for the appellant submits that even in the matter of ***Lahudas Sambhaji Karad vs. The State of Maharashtra***³, our High Court held that Charity Commissioner cannot pass such type of direction under section 41-E of the said Act. He relies on paragraph nos.18, 21, 25, 29 and 36 which reads thus:

“18. The important question which has been raised in these writ petitions is whether the Joint Charily Commissioner has powers under Sections 41-A and 41-E of the Bombay Public Trusts Act to issue directions of the nature stated in the order in Application No. 3/92.”

3 1992 SCC Online Bom 320

“21. However, it should be observed that similar provisions are also to be found in the original Sections 40, 41 or even Section 50 of the said Act but the steps could be taken only after the loss or mismanagement has been caused. There was, therefore, no preventive measures. It would be, therefore, proper to state that these directions relate to the matters falling under Sections 32 to 41 of the Bombay Public Trusts Act, 1950. These sections provide for proper administration of the public trusts or proper accounting or appropriate application of the income of the trust to the objects of the said trust. Section 41-A, there-fore, does not contemplate any adjudication and is, therefore, not subject to the rules of natural justice and obviously those directions' are not appealable nor could be questioned under Section 72 of the Bombay Public Trusts Act. They are not in the nature of quasi-judicial directions. Such directions could be issued to the trustees or any person connected with the trust and every trustee or a person to whom such directions are issued is bound to comply with them under Section 41-A(2) of the said Act, Now application under Section 41-E is obviously not warranted because the grievance is in relation to the list of voters and not in relation to the trust property being wasted, damaged or improperly alienated. The application under Section 41-E was not, therefore, maintainable. All the same, it will have also to

be examined as to whether Joint Charity Commissioner was justified in interfering with election process already set in motion by issuing directions as are to be found in his order dated 14-5-1992 under S.41-A of the Act.”

“25. This would show that the main safe guards that have to be kept in mind by the Charity Commissioner or the Joint Charity Commissioner are in respect of the property and other affairs of society. If there is negligence in the management of affairs of the society, directions could be issued but the scope of Section 41-A would certainly not cover the interference with the process of election and also interference in respect of the members entitled to vote. They are the disputes which can be corrected by filing change reports after the elections under Section 22 of the Act. I, therefore, feel that the Joint Charity Commissioner should not have entertained the application No. 3/92 filed by Halge and Deshmukh. They had the remedy to approach the Assistant Charity Commissioner questioning the change report. Merely because no further action was likely to be taken on the part of the society or others to challenge the voters' list, the Charity Commissioner did not acquire any powers to look into these affairs and rectify them by virtually stalling the election.”

“29. In this behalf, the learned advocate for the President has contended that the list is relied upon even by the respondents. There are names of Election

Officers Lahoti and Swami. The respondents have not been able to point out as to how their names have come although their appointments as Election Officers have been disputed by the respondents. The list of 834 members, on the other hand, is signed by the President, Election Officer Lahoti and Assistant Election Officer Swami. They all have signed on 10-3-1992. This lends credibility to the list of 835 members, out of whom one Sarda is dead.”

“36. To repeat again, the Joint Charity Commissioner was not competent to investigate this list during the election process as that investigation was clearly beyond the scope of S.41-A of the Bombay Public Trusts Act, 1950. The above circumstances, therefore, clearly point to an important fact that the meeting of the Governing Council was held on 19-2-1992 in pursuance of the circular dated 18-2-1992 and that two resolutions were passed -- one approving the list of additional members and the other relating to the appointment of Election Officers. As stated above, the list R-3 approved by the Election Officers and the President has been relied upon even by the respondents and this would, therefore, establish the submission of the petitioner that the Election Officers were appointed in terms of the resolution dated 19-2-1992.”

13 On the basis of these submissions, the learned counsel for the appellants submits that impugned order dated 09.02.2018 passed by the learned Joint Charity Commissioner, Pune Region, Pune in Application No.15 of 2017 under section 41-E of the said Act is required to be set aside.

14 On the other hand, the learned Senior Counsel for the Respondent vehemently opposed the present First Appeal. He submits that the learned Joint Charity Commissioner, Pune Region, Pune after considering the evidence on record rightly held that Respondent made out a case under section 41-E of the said Act. He further submits that considering the facts of the present matter, the learned Joint Charity Commissioner on its own directed appellants to hold the election within stipulated time. He submits that though elections were due for last several years, the appellants on one or the other ground postponed the same. Hence, authority below rightly directed them to hold election within particular time.

15 The learned Senior Counsel for the Respondents submits that, the learned Joint Charity Commissioner considering the fact that, appellants prevented the confirmed teachers from their valuable rights to participate in the Annual General Body Meeting and caste their votes, by taking such steps, appellants unnecessarily created a situation, which prompt unnecessary litigation, wherein the trust being the necessary party is required to spend the amount, which is nothing but wasting the "trust funds". Therefore, Joint Charity Commissioner entertained the Application under section 41-E of the said Act and directed

appellants to hold election as per the constitution of the trust.

16. The learned Senior Counsel for Respondents submits that the learned Joint Charity Commissioner in paragraph 24 of the impugned order, specifically held that the appellants in order to keep control on the trust, without giving any opportunity to the confirmed teachers, are trying to extend their tenure by amending the constitution, which is seriously prejudicial to the interest of the Respondent and therefore, held that the Application filed by the Respondent under section 41-E of the said Act is maintainable. In support of this contention, that the Application filed by the Respondents is maintainable for the reliefs granted by the Joint Charity Commissioner, he relies on the judgment of this court in the matter of ***Vanmala Manoharrao Kamdi & Ors. vs. Deputy Charity Commissioner & Ors***⁴. He relies on paragraph 19 of the said judgment which reads thus:

“19. Thus, looking to the scheme of the Act and the ratio of these decision it is clear that the function of the Charity Commissioner while acting under the provisions of the Act is administrative, judicial as well as quasi-judicial and even that he acts as a watchdog and a delegate of the Government for superintendence and control over the Public Trusts. Not only that the Division Bench of this Court in the decision cited supra went to the extent of saying, with which we fully agree, that Charity Commissioner acts even as a litigant on

4 2012 (6) Bom C.R. 635

behalf of the Trust he having been empowered to file appeals or other proceedings before the Court or he is even entitled to defend on behalf of the Public Trusts or actions of Charity Commissioner under the B.P.T. Act, 1950. Thus, taking survey of all these decisions and the nature of powers and functions performed by the Charity Commissioner, we hold that the Charity Commissioner functions as an administrative, inquisitive, quasi-judicial as well as judicial authority under the different provisions of the B.P.T. Act, 1950 and has also to act/defend as a litigant for the public trusts as parens patriae.”

17 The learned Senior Counsel for the Respondent also relies on the judgment in the matter of ***Prabhakar Waktuji Sapate v. Narayan Baburao Dhakate and Others***,⁵ Paragraph 11 and 12 reads thus:

“11. In the instant case, the term of executive committee elected in the year 2010 is admittedly over. Therefore, one or the other executive committee has to take over or otherwise there would be vaccum in the management of the society. To avoid this situation the Assistant Charity Commissioner has to take such steps as are permissible in law. Issuance of a direction to hold election is one of the steps permissible under the law. This step has been taken in the instant case and

5 2016(4) Mh.L.J. 866

apparently it is taken in the best interest of the society. Such an order as passed on 31.12.2015 by learned Assistant Charity Commissioner, therefore could not have been stayed, during pendency of the appeal. If, on merits, it is found that the order dated 31.12.2015 is perverse or absolutely illegal, all consequential orders can be passed and, therefore, there is no question of the appeal getting infructuous or cropping of complications or giving birth to multiple proceedings.

12. *In the case of Vanmala Manoharrao Kamdi and others vs. Deputy Charity Commissioner, Nagpur and others, reported in 2012(3) Mh.L.J. 594, the Division Bench of this Court held that when an administrative order is passed which is in the interest of the society or the Trust, there could be occasions, which would not necessitate grant of any hearing to the trust or its members. The Division Bench held that in such cases, most of the time the satisfaction is subjective and, therefore, hearing before making any order may not be possible in each case. In the case of Dattatraya s/o. Mahadeo Hiware and others vs. Arjun s/o. Sambhaji Shinde and others, reported in 2007(1) Mh.L.J. 48, learned Single Judge of this Court held that the Charity Commissioner is empowered to issue directions under Section 41A of the said Act for ensuring proper administration of the Trust. So there cannot be any dispute about the power of the Assistant Charity*

Commissioner to issue a direction for holding of election under Section 41A, and if required, without even hearing an objector, as the Assistant Charity Commissioner has done in the present case and prima facie, rightly so.”

18 The learned Senior Counsel for the respondent further submits that bare reading of paragraph 38 and 39 of the impugned order shows that the learned Joint Charity Commissioner suo-moto directed Appellants to hold election within particular time, as per the constitution of the trust. The authority in paragraph 38 of the impugned order recorded that, the election of the Governing Council was held on 26.7.2016. The tenure of the Governing council was over on 25.7.2017. Therefore, the Governing council became care taker body w.e.f. 26.7.2017. Though the Governing Council was elected only for one year, they are in power till today on the basis of interim orders passed in several litigations.

19 On the basis of these submissions, the learned Senior counsel for the Respondent submits that there is no substance in the present First Appeal and same is required to be dismissed with costs. Considering the overall positions of these facts, the learned Joint Charity Commissioner on its own directed appellant to hold election within particular time. He submits that bare reading of section 41-E of the said Act and overall scheme of the said Act shows that, office of the Charity Commissioner is

custodian of trust. Hence, Office of the Charity Commissioner can take appropriate decision in the interest of Trust. Therefore, there is no question of interference in impugned order passed by learned Joint Charity Commissioner. Therefore, First Appeal is required to be dismissed with costs.

20 After hearing both the sides at length, following issues arise for my consideration in the present First Appeal:

A Whether the Joint Charity Commissioner can pass appropriate order directing Appellants to hold election in an Application under section 41-E of the Maharashtra Public Trust Act, 1950? No.

B Whether the impugned order dated 9.2.2018 passed by the Joint Charity Commissioner, Pune Region, Pune in Application No.15 of 2017 under section 41-E of the Maharashtra Public Trust Act, 1950 is required to be set aside.? Yes.

21 Bare reading of the Application filed by the Respondent under section 41-E of the said Act shows that, prayer was to restrain the appellants from holding General Body meeting on 26.3.2017 or any time thereafter, without issuing notices to all the confirmed teachers, who have been confirmed in service in any of the branches of the Society prior to 26.7.2016. Actually there is no prayer for injunction restraining the members/society from wasting any trust's property. Apart from that, the main grievance of the Respondents was that, member of the society /

trust must hold General Body meeting, as per the constitution i.e. treating all the permanent teachers as on 26.7.2016 as General Members of trust having right to cast their votes and to put forth their thoughts in the Annual General Meeting. Bare reading of the clause no.7 of classification of the members of the Trust constitution clearly shows that, permanent teachers / staff in service in any branch of Sanstha have right to cast their votes and to put forth their thoughts in the Annual General Body Meeting. But the question comes whether Joint Charity Commissioner can direct the Society to hold election in an Application filed under section 41-E of the said Act. There is no power to the Joint Charity Commissioner to pass order to that effect. Apart from that, even Joint Charity Commissioner have no power to pass suo moto order in an Application under section 41-E of the said Act to that effect. At the most, Joint Charity Commissioner under section 41E of the said Act, passed suo-moto order only in respect, for protection of charities.

22 It is to be noted that in an application under Section 41 E of the said Act, an injunction can be issued to restrain an act of the type mentioned in clause (a) or (b) or to make such an order for the purpose of preventing the waste, damage, alienation, sale, removal or disposition of the property. The trust property, complained of must be in danger of being wasted, damaged or wrongfully disposed of. This is an essential requisite and there must be prima facie case to show such eminent danger. Where there is no allegation of danger of such waste or damage, the application should be rejected. Temporary injunction requires that some injury must be threatened. Injury must be legal injury

and not any fancied injury. The other element to be considered is whether irreparable injury or inconvenience may result if the injunction is refused. Mere prospect or apprehension of injury is not sufficient. A mere allegation of waste, etc. is not enough. There must be proof of actual or reasonably apprehended danger of such waste or damage, before an injunction can be granted. The question as to what constitutes sufficient danger or waste or damage will depend upon the facts and circumstances of each case. In order to show that the property is in danger of being alienated some overt act towards the alienation of the property such, for example as negotiations or offers for sale should be alleged and proved. The threat or intent to remove or dispose of property with a view to damage the trust property, must be proved by definite evidence.

23 Therefore, direction given by the Joint Charity Commissioner to the extent of holding the election is required to be set aside.

24 It is to be noted that the authority cited by the appellants as well as respondents are not pertaining to the powers of Joint Charity Commissioner under section 41-E of the said Act, but sum and substance of these authorities is that office of the Charity Commissioner can exercise their power under the said Act, as per particular section only. In the case in hand, when the Respondents filed Application under section 41-E of the said Act, there is no question of granting any other relief beyond the scope of the said section.

25 In view of above mentioned discussion, I am of the opinion that direction given by the Joint Charity Commissioner to the appellants to hold election within particular time, is required to be set aside because same is beyond his jurisdiction.

26 In view of the above mentioned facts, issue no.1 is answered in the negative and issue no.2 in the affirmative that Joint Charity Commissioner have no power under section 41-E of the said Act to direct the trust to hold the elections.

27 Considering the fact stated by the Joint Charity Commissioner in paragraph 38 and 39 of the impugned order that the appellants are in power since 25.7.2017 though their tenure was over, I am of the opinion that it is necessary to grant liberty to the Respondents to take appropriate steps for directing Appellants to hold the election immediately as per the constitution of the trust. Hence following order:

- a. First Appeal is allowed.
- b. Order dated 09.02.2018 passed by Joint Charity Commissioner, Pune Region, Pune in Application No.15 of 2017 under section 41E of the Maharashtra Public Trust Act, 1950, is set aside.
- c. Liberty granted to the Respondents, if they so desire, to prefer appropriate application for declaring them as General Members of Janata Shikshan Sanstha, Pune as per its Constitution according to law.

- d. Liberty granted to the Respondents, if they so desire, to prefer appropriate Application according to law, within two month from today, for direction to the Appellants / Trust to hold election of the Governing Council, as early as possible.
- e. If Application is filed by the Respondents within two month for election of Governing Council, in that case, authority is directed to decide the application after hearing both the side as early as possible, but in any case, within three months from receipt of the same, on its own merits, without being influenced by the order passed by this court.
- f. Ad-interim relief granted on 6.4.2018 in Writ Petition No.3900 of 2018 to continue for two months and if application is filed by the Respondent for holding elections, and / or for declaring them as a General Member of Janata Shikshan Sanstha, Pune, as per its Constitution, according to law, then, same to continue till final disposal of that application.
- g. In view of disposal of First Appeal as mentioned, nothing survives in Civil Application. Same stands disposed of as infructuous.
- h. No order as to costs.

(K.K.TATED, J.)