

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

WRIT PETITION NO.10498 OF 2021

1. Rajendra s/o Gulabrao Adhav,
Age : 55 years, Occu. Service,
R/o Shrikrishna Nagar, Parbhani,
Tq. & Dist. Parbhani
2. Uttamrao s/o Abaji Bharose,
Age : 65 years, Occu. Pensioner,
R/o Yeldarkar Colony, Vasmat Road,
Parbhani, Tq. & Dist. Parbhani
3. Suresh s/o Uttamrao Adhav,
Age : 55 years, Occu. Service,
R/o Yeshwant Nagar, Vasmat Road,
Parbhani, Tq. & Dist. Parbhani
4. Rajabhau s/o Vishwanath More,
Age : 49 years, Occu. Service,
R/o Mathura Nagar, Vasmat Road,
Parbhani, Tq. & Dist. Parbhani
5. Mahadev s/o. Dagdoji Kaste
Age : 56 years, Occu. Service,
R/o Yeshwant Nagar, Vasmat Road,
Parbhani, Tq. & Dist. Parbhani
6. Dnyanoba s/o Narayanrao Jawale,
Age : 61 years, Occu. Pensioner,
R/o Shrikrishna Nagar, Parbhani,
Tq. & Dist. Parbhani
7. Sopan s/o Dattarao Chavan,
Age : 54 years, Occu. Service,
R/o Yeshwant Nagar, Parbhani,
Tq. & Dist. Parbhani
8. Vasant s/o Tikaram Bharose,
Age : 50 years, Occu. Service,
R/o Rachana Nagar, Parbhani,

Tq. & Dist. Parbhani

9. Anant s/o Sheshrao Vairagar,
Age : 54 years, Occu. Service,
R/o Yeshwant Nagar, Vasmat Road,
Parbhani, Tq. & Dist. Parbhani
10. Vitthal s/o Dhondiram Bobde,
Age : 55 years, Occu. Service,
R/o Shrikrishna Nagar, Parbhani,
Tq. & Dist. Parbhani
11. Rajabhau s/o Dadarao Kharat,
Age : 55 years, Occu. Service,
R/o Sanjivani Nagar, Jintur Road,
Parbhani, Tq. & Dist. Parbhani
12. Prabhakar s/o Abaji Gaikwad,
Age : 52 years, Occu. Service,
R/o Prakash Nagar, Parbhani,
Tq. & Dist. Parbhani

Versus

1. The Assistant Charity Commissioner,
Parbhani, Subhedar Complex,
Bhaji Mandi, Parbhani
2. Shivajirao Namdevrao Kakde,
Age : 75 years, Occu. Pensioner,
R/o Beleshwar Krupa, Krushi Sarthi Colony,
Parbhani, Tq. & Dist. Parbhani.
3. Dr. Vedprakash Kashiram Patil,
Age : 80 years, Occu. Pensioner,
R/o `Shanti', Plot No.138, N-3,
CIDCO, Aurangabad,
Tq. & Dist. Aurangabad
4. Vitthal s/o Govindrao Bhosale,
Age : 75 years, Occu. Pensioner,
R/o Wadhona (Kh.), Post. Wadhona (Bk),
Tq. Udgir, District Latur

Correct Address : Near Tahsil Office,
Udgir, Tq. Udgir, District Latur

5. Gajanan s/o Shivajirao Kakde,
Age : 45 years, Occu. Business,
R/o Beleshwar Krupa, Krushi Sarathi Colony,
Vasmat Road, Parbhani, Tq. & Dist. Parbhani
6. Rahul Vedprakash Patil,
Age : 45 years, Occu. Business,
R/o Torna, Shivajinagar, Parbhani,
Tq. & Dist. Parbhani
7. Uday s/o Vitthalrao Bhosale,
R/o Wadhona (Kh.), Post Wadhona (Bk.),
Tq. Udgir, District Latur,
Correct Address : Near Tahsil Office, Udgir,
Tq. Udgir, District Latur
8. Mahendrasing Dalpat Salunke,
Age : 42 years, Occu. Agri.,
R/o Bhavvishv, Nandkheda Road,
Near Pardeshwar Temple,
Pardeshwar Nagar, Parbhani,
Tq. & Dist. Parbhani
9. Santosh G. Chimankar,
Age : Major, Occu. Service,
R/o Office of A.C.C. Parbhani,
Subhedar Complex, Bhaji Mandi,
Near Mali Galli, Parbhani, Tq. &
Dist. Parbhani

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Mr. Rajendra S. Deshmukh, Senior Advocate a/w.
Mr. Sanket A. Jadhav i/by. Mr. Sudhir K. Chavan,
Advocate for petitioner

Mr. S.S. Dande, AGP for the Respondent – State
Mr. Nandkumar B. Khandare, Advocate for respondent nos.2 and 3
Mr. S.V. Adwant, Advocate for Respondent nos.4, 5 & 8
Mr. D.J. Choudhari, Advocate for Respondent Nos.6 and 7

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WITH

CIVIL APPLICATION NO.10447 OF 2021
WITH
CIVIL APPLICATION NO.10833 OF 2021

WITH
WRIT PETITION NO.3788 OF 2021

Anand s/o Sheshrao Bharose,
Age : 43 years, Occu. Agri.,
R/o. Rani Laxmibai Road,
Parbhani, Tq. & Dist. Parbhani .. Petitioner

Versus

1. Rahul Vedprakash Patil,
Age : 45 years, Occu. Business,
R/o Torna, Plot No.138, Shivajinagar,
Parbhani, Tq. & Dist. Parbhani
2. Vitthal Govindrao Bhosle,
Age : 75 years, Occu. Pensioner,
R/o Wadhona (Kh), Post Wadhona (Bk.),
Tq. Udgir, District Latur
3. Gajanan Shivajirao Kakde,
Age : 45 years, Occu. Business,
R/o Beleshwar Krupa, Basmat Road,
Krushi Sarthi Colony, Parbhani,
District Parbhani
4. Mahendrasing Dalpat Salunke,
Age : 42 years, Occu. Agri.,
R/o Bhauvishv, Nathkheda Road,
Near Pardeshwar Mandir,
Pardeshwar Nagar, Parbhani,
Tq. & Dist. Parbhani
5. Dr. Vedprakash Kashiram Patil,
Age : 80 years, Occu. Retired,
R/o House No.21, Near Devgiri College,
Rachnakar Colony, Osmanpura, Aurangabad,
Tq. & Dist. Aurangabad

6. Shivajirao Namdevrao Kakde,
Age : 75 years, Occu. Retired,
R/o Beleshwar Krupa, Krushi
Sarathi Colony, Parbhani, Tq. &
Dist. Parbhani
7. Uday Vitthalrao Bhosale,
Age : 46 years, Occu. Social Worker,
R/o Wadhona (Kh.), Post Wadhona (Bk),
Tq. Udgir, District Latur
8. Joint Charity Commissioner,
Aurangabad Division, Aurangabad
9. Santosh G. Chimankar,
The Assistant Charity Commissioner,
Parbhani, District Parbhani

RESPONDENTS

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Mr. R.N. Dhorde, Senior Advocate i/by. Mr. Vikram S. Kadam,
Advocate for petitioner
Mr. S.S. Dande, AGP for respondent – State
Mr. S.V. Adwant, Advocate for Respondent no.4
Mr. N.B. Khandare, Advocate for Respondent no.6
Mr. D.J. Choudhary, Advocate for Respondent No.7

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CORAM : SANDEEP V. MARNE, J.**RESERVED ON : 28-11-2022****PRONOUNCED ON : 02-12-2022****JUDGMENT:**

. Rule. Rule is made returnable forthwith. With the consent of the parties, called out for final hearing. Mr. S.S. Dande, the learned AGP and Mr. Nandkumar B. Khandare, Mr. S.V. Adwant, Mr. D.J. Choudhari, the learned counsels waive notice on behalf of the respective respondents in both the writ petitions.

2. Petitioners are aggrieved by the order dated 11.01.2021 passed by the Assistant Charity Commissioner, Parbhani provisionally accepting change reported by the rival group of respondents under the provisions of sub-section (2) of Section 22 of the Maharashtra Public Trusts Act, 1950 (hereinafter referred to as the 'Act of 1950'). Petitioners in Writ Petition No.3788 of 2021 filed their objections to the order dated 11.01.2021, which has been repelled by the Assistant Charity Commissioner by his order dated 28.01.2021.

3. Considering the narrow controversy involved in these petitions, it is not necessary to narrate the chequered history of disputes between the rival groups for control over Sanjivani Education Society, a trust registered under the provisions of the Act of 1950. Several change reports were filed by the rival groups of petitioners and respondents before the Assistant Charity Commissioner reporting their respective changes in the management of the trust. The main bone of contention between the rival groups is about admission of new members to the trust. While respondent group wanted to admit 4 new trustees, petitioners' group has effected admission of 157 new members. Six change reports filed by the rival groups of petitioners and respondents came to be heard and decided by a common judgment and order dated 29.04.2017 by the Assistant

Charity Commissioner, Parbhani. All 6 change reports came to be rejected by that common judgment and order.

4. Both petitioners as well as respondents filed appeals before Jt. Charity Commissioner, Aurangabad challenging the judgment of the Assistant Charity Commissioner, Parbhani dated 29.04.2017. The Jt. Charity Commissioner passed a common judgment in all 6 appeals on 07.05.2019 dismissing appeals of both the groups. The Jt. Charity Commissioner referred to the group of petitioners as 'Bharose Group' and group of respondents as 'Patil Group'. For the sake of convenience, the Petitioners and Respondents are being referred by the same nomenclature in the present judgment. Jt. Charity Commissioner issued directions for formation of various bodies to constitute Governing Council through the founder members and members of the transitory body. The Governing Council so constituted was directed to hold elections for regular Governing Council which was to act as legal body of the trust. Assistant Charity Commissioner was directed to ensure compliance of the order passed by the Jt. Charity Commissioner and if necessary, issue directions under Section 41-A of the Act of 1950.

5. Both 'Bharose Group' as well as 'Patil Group' were aggrieved by the common judgment and order passed by the Jt.

Charity Commissioner on 07.05.2019 and both the groups have filed their own sets of writ petitions in this Court challenging the decision of the Jt. Charity Commissioner. On 04.06.2019, this Court (*Coram: Ravindra V. Ghuge, J.*) passed an interim order in those writ petitions staying the implementation of directions of the Jt. Charity Commissioner.

6. It is the case of petitioners that despite stay being granted by this Court to the directions issued by the Jt. Charity Commissioner to hold elections, respondent 'Patil Group' claimed holding of elections and formed a new Governing Council and thereby took over the affairs of the trust. Accordingly, respondents 'Patil Group' filed change report Enquiry No.8 of 2021 on 11.01.2021 to report the change in accordance with the results of the election and formation of the Governing Council. On 11.01.2021, the Assistant Charity Commissioner proceeded to pass an order thereby provisionally accepting the change under the provisions of Section 22 (2) of the Act of 1950. Petitioners in Writ Petition No.3788 of 2021 first sought their impleadment in Change Report Enquiry No.8 of 2021 and upon being successfully impleaded therein, moved application for setting aside order dated 11.01.2021. The Assistant Charity Commissioner however, rejected the application of petitioners

by order dated 28.01.2021. This has led to filing of the Writ Petition No.3788 of 2021. The other Writ Petition bearing No.10498 of 2021 is filed assailing the order dated 11.01.2021 without seeking to recall order of the Assistant Charity Commissioner.

7. The Petitions were heard by this Court and dismissed vide judgment and order dated 18-11-2021 holding that the Petitioners have alternate remedy of filing revision under Section 70-A of the Act of 1950. That Judgment and Order was challenged by the Petitioners before the Supreme Court by filing SLP (C) No. 20248 of 2021, which came to be disposed of vide order dated 22.07.2022 directing this Court to decide the present Petitions as the other main petitions filed by parties are pending before this court.

8. Mr. Dhorde, the learned Senior Counsel for petitioners in Writ Petition No.3788 of 2021 would contend that the order dated 11.01.2021 passed by the Assistant Charity Commissioner is in total violation of and in utter disregard to the interim order passed by this Court on 04.06.2019. He would submit that the stay order was deliberately suppressed by the respondent 'Patil Group' while moving change report Enquiry No.8 of 2021. He would further submit that the Assistant Charity Commissioner hastily passed order for

provisionally accepting the change on the same day of presenting change report Enquiry No.8 of 2021 i.e. on 11.01.2021. He would therefore question the motive of the Assistant Charity Commissioner in passing such an order with undue haste. Mr. Dhorde would invite my attention to the entries in the Schedule-I of the trust regarding filing of various writ petitions in this Court, in which interim order dated 04.06.2019 was passed. Mr. Dhorde would therefore contend that the Assistant Charity Commissioner was otherwise aware of filing of such writ petitions and ought to have verified orders passed therein before provisionally accepting the change vide order dated 11.01.2021. Mr. Dhorde would contend that taking disadvantage of order accepting provisional change, the respondent 'Patil Group' has taken over management of the trust and is taking policy decisions, operating bank accounts, withdrawing the huge amounts and illegally promoting ineligible and junior staff etc.

9. Mr. Deshmukh, the learned Senior Counsel for petitioners in Writ Petition No.10498 of 2021 would adopt the submissions of Mr. Dhorde. He would submit that the order passed by Assistant Charity Commissioner in violation of interim order of this Court cannot be permitted to operate even for a single day and must be set aside instantaneously. He would submit that the hearing of the main writ petitions would take longer time and taking disadvantage

of that position, respondent - 'Patil Group' has been mismanaging the affairs of the trust by withdrawing huge amounts from the accounts of the trust and illegally promoting ineligible and junior staff etc.

10. Per contra, Mr. Adwant, Mr. Khandare and Mr. Choudhari, the learned Counsels appearing for various respondents representing 'Patil Group' have strenuously opposed the petitions. They have urged before this Court to take up the main writ petitions, in which interim order dated 04.06.2019 was passed instead of deciding present petitions independently. They would submit that the present petitions deal with the issue of provisional change which is a temporary arrangement, whereas the decision of the main writ petitions would put an end to the entire controversy between the parties.

11. They would further submit that when the present petitions were disposed of on 18.11.2021 with a direction to petitioners to avail the alternate remedy, petitioners made submissions before the Hon'ble Supreme Court in SLP (C) No.20248 of 2021 that the High Court ought to have decided the present petitions along with the main writ petitions. They would submit that petitioners got the present petitions remanded to this Court by using

pendency of the main writ petitions and now petitioners want to press only the present petitions and not the main writ petitions. They would therefore strenuously criticize the selective approach of petitioners.

12. Mr. Choudhari, learned Counsel for respondent nos. 6 and 7 would submit that the true purport of interim order passed by this Court on 04.06.2019 is that all the fetters put by the Jt. Charity Commissioner in holding of elections were removed and the trust was permitted to hold elections. He would therefore submit that holding of elections and reporting change in pursuance thereof was strictly in accordance with the interim order of this Court dated 04.06.2019. He would question *locus standi* of petitioners to file the present petitions.

13. Mr. Adwant, the learned Counsel for respondent nos. 4, 5 and 8 would question maintainability of the present petitions. Referring to the prayers made by petitioners, he would submit that petitioners have sought mere declaration which cannot be countenanced in a writ petition filed under Article 226 and 227 of the Constitution of India. Mr. Adwant has accused petitioners of suppressing vital information from this Court. He would submit that

while petitioners are seeking to blame respondent - Patil Group of holding elections and filing change report in violation of interim order dated 04.06.2019, petitioners have suppressed the fact of holding their own elections on 20.09.2019 and filing enquiry change report no.79 of 2021. Additionally, petitioners themselves filed application for provisional acceptance of their change on 27.01.2021 which came to be rejected by the Assistant Charity Commissioner on 12.02.2021. That petitioners failed to challenge the order dated 12.02.2021 which attained finality. Instead of challenging that order dated 12.02.2021, petitioners started assailing the order passed in favour of the respondent Patil group by filing the present petition four days thereafter on 16.02.2021. Mr. Adwant would urge for dismissal of the petition on account of suppression of material facts and rely upon the judgments of the Supreme Court in **Oswal Fats and Oils Limited vs. Additional Commissioner (Administration), Bareilly Division, Bareilly and Others**, (2010) 4 SCC 728 and **Ramjas Foundation and another vs. Union of India and Others**, (2010) 14 SCC 38.

14. Mr. Adwant would also question *locus standi* of petitioners to file the present petition. Referring to the provisions of sub-section 3 of Section 22 and Section 2 (10) and 2 (2A) of the Act

of 1950, Mr. Adwant would contend that petitioners do not fall within the definition of the term 'person having interest' and therefore do not have any *locus* to file the present petition to challenge the decision of the Assistant Charity Commissioner.

15. Mr. Khandare, the learned Counsel for respondent nos.2 and 3 would urge not to hear the present petitions in isolation of the main writ petitions. He would submit that the submissions made by petitioners before the Supreme Court read with the order passed in their SLP would mandate hearing of all the petitions together. He would submit that respondent - Patil Group is otherwise permitted to manage the affairs of the trust till constitution of new managing committee by order dated 19.05.2010 of the Assistant Charity Commissioner in Enquiry Suit No.149 of 2009. He would therefore submit that instead of examining validity of acceptance of provisional change, it would be expedient to hear the main disputes between the parties relating acceptance of new members and validity of elections held from time to time.

16. Rival contentions of the parties now fall for my consideration.

17. Though the disputes between the rival 'Bharose Group' and 'Patil Group' relating to the control over management of the trust involve chequered history of litigations and several disputed questions of law and fact, the issue involved in the present petitions is relatively short. The only issue that I am tasked upon to decide is whether the Assistant Charity Commissioner is justified in provisionally accepting the change reported by respondent - Patil Group by the impugned order dated 11.01.2021. Again determination of the issue does not involve examination of merits. Rather it involves the issue of propriety in passing the impugned order by the Assistant Charity Commissioner. It is only because of this short ambit of the controversy involved in the present petitions that I have proceeded to decide them independent of the other main writ petitions involving examination of validity of change reports filed by the rival groups. I was repeatedly persuaded by the learned counsel appearing for respondent - Patil group to hear the present petitions along with the main writ petitions so as to put an end to the entire controversy. Their contention is premised on the submissions made by petitioners before the Supreme Court to the effect that the present petitions could be heard along with the main writ petitions. The submissions appear attractive in the first blush. However on deeper scrutiny of the manner in which the Assistant Charity Commissioner

has proceeded to pass the impugned order has made it necessary for me to segregate these two petitions and decide them first before the main writ petitions are taken up for hearing. Now, I proceed to examine manner in which the Assistant Charity Commissioner has proceeded to pass the impugned order.

18. The Jt. Charity Commissioner in his judgment and order dated 07.05.2019 had issued following directions:

“(1) Appeal No.153/2017, 145/2017, 108/2017 of Patil Group and Appeal No.162/2017, 163/2017, 146/2017, 119/2019 from Bharose Group stands dismissed.

(2) The Founder Members and Members of Transitory Body i.e. Shri. V.K. Patil, Shri. B.G. Nirval, Shri. V.G. Bhosale, Shri. S.N. Kakade are directed that, after one month from today and thereafter within three months, to take the necessary steps for formation of various Bodies to constitute Governing Council.

(3) The Governing Council so constituted shall take necessary steps for calling General Body meeting for the election of regular Governing Council.

(4) The regular governing council so elected shall then act as legal Body of the Trust.

(5) The above four Founder Members shall strictly follow the Rules and Regulations while implementing the above directions.

(6) The learned A.C.C., Parbhani having control over the Trust to see that, the directions of this Authority are being complied in its true spirit and if he finds fault in compliance of the above directions, shall issue the necessary further directions under Section 41-A of the Trust Act.

(7) Judgment declared in open court in present of learned Advocate Shri. D.J. Choudhari and Shri. K.S. Daithankar.

(8) Original Judgment be kept in Appeal No.108 of 2017 and it's verified copy be kept in other Appeals.”

19. The above directions have been challenged by both the rival groups by filing Writ Petition Nos.6268 of 2019, 6314 of 2019, Writ Petition (St.) Nos.16409 of 2019, 16304 of 2019, 16392 of 2019. In all these five writ petitions, common order dated 04.06.2019 came to be passed by this Court as under:

- “1. Issue notice to the respondents. The learned advocates cause an appearance and waive service on behalf of the respective respondents in these writ petitions.
2. The affidavit in reply by the respondents, if so desired, shall be entered on or before 10.06.2019. The rejoinder, if any, may be filed by petitioners on or before 20.06.2019.
3. List these petitions on 27.06.2019 after the urgent admission board.
4. Parties may note that if time permits, these petitions may be considered finally at an admission stage.
5. In the meanwhile, the implementation of the directions of the learned Joint Charity Commissioner vide impugned orders dated 07.05.2019 shall stand deferred till the next date in these petitions.
6. Hamdast is granted to petitioners for calling the record and proceedings in Appeal No.162/2017 arising out of Change Report No.190/2010, from the concerned office of the learned Joint Charity Commissioner and/or the learned Assistant Charity Commissioner, as the case may be.”

20. Thus, all the directions issued by the Jt. Charity Commissioner in his judgment and order dated 07.05.2019 came to be stayed by this Court by its order dated 04.06.2019. The interim order has been extended from time to time and continues to operate till date. It appears that filing of those writ petitions have been duly incorporated in Schedule-I of the Trust by the Assistant Charity

Commissioner. The respondent 'Patil group' filed Civil Application No.6469 of 2021 in Writ Petition No.6268 of 2019 on 10.12.2020 for vacating the interim order dated 04.06.2019. The prayers in the Civil Application read thus:

- “a) The order granting interim relief passed on 04/06/2019 in Writ Petition No.6268/2019 may be vacated and / or modified suitably so as to enable the applicant (petitioner in WP No.7866/2019) to look after the manage the administration of trust.
- b) During pendency of Writ Petition by passing an appropriate order the Hon'ble High Court may restrain the respondent No.1 and his companions claiming membership and from causing any sort of interference in the administration of trust.
- c) Alternatively, the applicant prays that the Writ Petitions may be peremptorily by fixing the date.
- d) Any other just and equitable relief may be granted.”

21. Thus, respondent Patil group approached this Court with a specific prayer to vacate / modify the interim order dated 04.06.2019 so as to enable them to look after and manage administration of the trust. No orders are passed by this Court in that Civil Application vacating / modifying the interim order dated 04.06.2019. Within 20 days of filing of the Civil Application, the respondent - Patil group held elections to the governing council of the trust on 30.12.2020 and filed Enquiry Change Report No.8 of 2021 on 11.01.2021 in pursuance of the elections so held. Interestingly, they referred to the judgment and order dated 07.05.2019 passed by

the Jt. Charity Commissioner in various appeals (the date of order is erroneously stated as 01.06.2019 in application) to show as if the elections were conducted in pursuance of that order. There is no reference to the interim order dated 04.06.2019 passed by this Court in the application filed by respondent Patil group.

22. On the same day of filing of application for change report Enquiry No.8 of 2021 i.e. on 11.01.2021, the Assistant Charity Commissioner proceeded to pass order provisionally accepting the change filed by respondent - Patil group under the provisions of Section 22 (2) of the Act of 1950. Since the interim order dated 04.06.2019 passed by this Court was not disclosed in the application filed by the respondent - Patil group, there is no reference to the same by the Assistant Charity Commissioner in his order dated 11.01.2021.

23. Thus, the application for change report Enquiry No.8 of 2021 was filed by respondent Patil group by suppressing order dated 04.06.2019 passed by this Court and by misleading the Assistant Charity Commissioner misled to believe as if the elections were conducted in pursuance of the order of Jt. Charity Commissioner passed on 07.05.2019. This conduct exhibited by the respondent – Patil group is not only deplorable but contemptuous.

24. As observed hereinabove, the Assistant Charity Commissioner has already taken note of filing of various writ petitions challenging the order of the Jt. Charity Commissioner dated 07.05.2019 in Annexure-1 of the trust and he was accordingly aware of filing of those petitions. However, it appears that he did not bother to verify whether any orders were passed by this Court in those writ petitions and proceeded to entertain change report Enquiry No.8 of 2021 on very same day of its filing.

25. Since all the directions issued by the Joint Charity Commissioner in his order dated 07.05.2019 were stayed by this Court by its order dated 04.06.2019, Patil group was not justified in holding the elections of governing council of the trust on 30.12.2021 and therefore the change sought to be reported by them in report Enquiry No.8 of 2021 was in utter violation of the order passed by this Court on 04.06.2019. The application at Exh.2 in that change report for provisional acceptance of change was equally in contravention of the interim order of this Court. Therefore, the order passed by the Assistant Charity Commissioner on 11.01.2021, being passed in utter disregard to the order passed by this Court on 04.06.2019 is palpably illegal. The Order is an outcome of deceit. It

would be relevant to refer to the Judgment of the Apex Court in **S.P. Chengalvaraya Naidu v. Jagannath**, (1994) 1 SCC 1 in which it is held:

"Fraud avoids all judicial acts, ecclesiastical or temporal" observed Chief Justice Edward Coke of England about three centuries ago. It is the settled proposition of law that a judgment or decree obtained by playing fraud on the court is a nullity and non est in the eyes of law. Such a judgment/decreed — by the first court or by the highest court — has to be treated as a nullity by every court, whether superior or inferior. It can be challenged in any court even in collateral proceedings.

26. The matter does not end here. After noticing the order dated 11.01.2021 passed by the Assistant Charity Commissioner, petitioners first got themselves impleaded in change report Enquiry No.8 of 2021 and filed application for setting aside the order dated 11.01.2021 by referring to the order passed by this Court on 04.06.2019. At least, at this stage, the Assistant Charity Commissioner ought to have corrected himself when his attention was invited to the interim order passed by this Court on 04.06.2019. He however proceeded to reject the application filed by petitioners by his order dated 28.01.2021. Again, in his order dated 28.01.2021, the Assistant Charity Commissioner did not even bother to make a reference to the order passed by this Court on 04.06.2019, rather he recorded a vague reason that he has provisionally accepted the change report and the legality and validity of the main change report could be decided on its own merits. By recording such a vague

finding, he showed ignorance and utter disregard to the order passed by this Court on 04.06.2019. The conduct exhibited by respondent - Patil group as well as the manner in which the Assistant Charity Commissioner passed orders dated 11.01.2021 and 28.01.2021 is appalling. It is because of this precise reason that I proceeded to hear and decide the present petitions before taking up the main writ petitions for hearing. Under the garb of putting an end to the entire controversy by hearing the main petitions, the aforesaid blunders committed by the Respondent-Patil Group and by the Assistant Charity Commissioner cannot be brushed under the carpet. His orders passed in utter disregard to the interim order of this Court dated 04.06.2019 cannot be permitted to be operated during pendency of the main writ petitions and the same deserves to be quashed and set aside. It would be travesty of justice if order secured as a result of deceit and passed in flagrant violation of order of this Court is not set aside immediately.

27. The submission of Mr. Choudhari that the true purport of interim order dated 04.06.2019 was removal of fetters on conducting of elections is stated only to be rejected. The contention presupposes that interim order dated 04.06.2019 was in favour of respondent Patil group. If it was so, why Civil Application No. 6469 of 2021 was filed

by them for vacation/modification of that order remains unexplained. The submission is therefore clearly after thought and a lame attempt to justify something which is unjustifiable.

28. Mr. Adwant has drawn my attention to the conduct of petitioners in holding their own elections on 20.01.2019 and filing enquiry Change Report No.79 of 2021. This conduct on the part of petitioners also is in violation of interim order passed by this Court on 04.06.2019. Mr. Adwant is right in contending that petitioners ought to have disclosed holding the elections and filing of the Enquiry Change Report No.79 of 2021 in the present petitions. Petitioners have also not disclosed the factum of filing their own application for acceptance of provisional change and its rejection by order dated 12.02.2021. This conduct on the part of petitioners is condemnable and deserves to be deprecated. However, though petitioners have indulged in the acts of suppression, the conduct displayed by Respondent-Patil Group and the illegalities committed by the Assistant Charity Commissioner are so palpable that the present petitions deserve to be entertained despite suppression indulged into by Petitioners. I would have been justified in imposing exemplary costs on Respondent-Patil Group for contemptuous conduct exhibited by them, however as the conduct of the Petitioners is also not free

from blemish, I refrain myself from imposing costs.

29. The objections raised by the learned counsel for the respondents about *locus standi* of petitioners to file the present petitions deserve outright rejection. Both petitioner - Bharose group and respondent - Patil group have been litigating against each other for the last over a decade and it cannot be contended by any stretch of imagination that petitioner - Bharose group lacks *locus standi* to file the present petition challenging the orders passed by the Assistant Charity Commissioner. The issue of maintainability of the present petitions raised by Mr. Adwant referring to the prayers made therein also deserves to be rejected. True it is that petitioners have not properly couched their prayers in the petition, however the same cannot be a reason not to entertain the present petitions pointing out palpable errors in the orders passed by the Assistant Charity Commissioner.

30. While I have proceeded to hear the present petitions, it does not mean that the main writ petitions bearing Writ Petition Nos .6268 of 2019, 6331 of 2019, 6355 of 2019, 6314 of 2019, 6352 of 2019, 7866 of 2019, 7865 of 2019 and 3268 of 2021 should be kept pending indefinitely. Having due regard to the submissions

made by the Petitioners before the Supreme Court while seeking remand of present petitions as well as the order passed by the Supreme Court, I propose to take up those petitions as well for hearing.

31. In the result, the present petitions are allowed. Orders dated 11.01.2021 and 28.01.2021 passed by the Assistant Charity Commissioner are set aside. Registry to list Writ Petition Nos. 6268 of 2019, 6331 of 2019, 6355 of 2019, 6314 of 2019, 6352 of 2019, 7866 of 2019, 7865 of 2019 and 3268 of 2021 for hearing on 07-12-2022 at 2.30 pm.

32. Rule is made absolute. Pending Civil Applications stand disposed of.

(SANDEEP V. MARNE, J.)

GGP