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

WRIT PETITION NO.8765 OF 2022

Pandurang Shenfadu Pawar
Age: 82 years, Occu : Agril,
R/o. Chincholi Limbaji,
Tq. Kannad, Dist. Aurangabad. .. Petitioner

Versus

1. Baburao Kashinath Pawar
Age : 62 years, Occu : Nil,
R/o. Chincholi Limbaji,
Tq. Kannad, Dist. Aurangabad.

2. Shivaji Panditrao Gaikwad
Age : 48 years, Occu : Agril,
R/o. Shastri Colony, Sillod,
Tq. Sillod, Dist. Aurangabad.

3. Ramesh Gajaba Mangate,
Age : 53 years, occu : Agril,
R/o. Shelgaon, Post. Dahegaon,
Tq. Kannad, Dist. Aurangabad.

4. Diwakar Maruti Jadhav,
Age : 50 years, Occu : Service,
R/o. 404, N-1, CIDCO, Aurangabad

5. Vishwanath Kashinath Pawar,
Age : 66 years, Occu : Agril,
R/o. House No. 75, Satyamnagar,
N-5, CIDCO, Aurangabad.

6. Smt. Indumati Panditrao Gaikwad
Age : 65 years, Occu : Household,
R/o. Shastri Colony, Sillod,
Tq. Sillod, Dist. Aurangabad.

7. Subhash Kashinath Chavhan
Age : 58 years, Occu : Agril,

R/o. Jahind Colony, Pisadevi,
Dist. Aurangabad.

8. Hari Kashinath Pawar
Age : 48 years, occu : Agril,
R/o. Chincholi Limbaji,
Tq. Kannad, Dist. Aurangabad.

9. Subhash Gajaba Mangate,
Age : 39 years, Occu : Service,
R/o. Plot No.1, Jaybhavani Nagar,
Aurangabad.

10. Bandu Kashinath Pawar,
Age : 39 years, Occu : Agril,
R/o. Plot No.111, Jadhavwadi,
Aurangabad.

11. Sow. Latika Vishwanath Pawar,
Age : 59 years, Occu : Household,
R/o. Satyam Nagar, N-5, CIDCO,
Aurangabad

12. Vasantrao Vinayakrao Thombre
Age : 42 years, Occu : Service,
R/o. Aurangabad.

13. Sow. Asha w/o. Baburao Mangate
Age : 51 years, Occu : Household,
R/o. Kannad, Tq. Kannad,
Dist. Aurangabad.

14. Sow. Mandakini Baburao Pawar
Age : 48 years, Occu : Service,
R/o. Chincholi Limbaji,
Tq. Kannad, Dist. Aurangabad.

15. The Joint Charity Commissioner,
Aurangabad Region, Aurangabad.

16. The Deputy Charity Commissioner,
Aurangabad. .. Respondents

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WITH

WRIT PETITION NO.8764 OF 2022

Pandurang Shenfadu Pawar,
Age : 82 years, Occu : Agril,
R/o. Chincholi Limbaji,
Tq. Kannad, Dist. Aurangabad. .. Petitioner

Versus

1. Baburao Kashinath Pawar,
Age : 62 years, Occu : Nil,
R/o. Chincholi Limbaji,
Tq. Kannad, Dist. Aurangabad.

2. Shivaji Panditrao Gaikwad,
Age : 48 years, Occu : Agril,
R/o. Shastri Colony, Sillod,
Tq. Sillod, Dist. Aurangabad.

3. Ramesh Gajaba Mangate
Age : 53 years, Occu : Agril,
R/o. Shelgaon, Dahegaon,
Tq. Kannad, Dist. Aurangabad.

4. Diwakar Maruti Jadhav
Age : 50 years, Occu : Service,
R/o. 404, N-1, CIDCO, Aurangabad

5. Vishwanath Kashinath Pawar
Age : 66 years, Occu : Agril,
R/o. House No.75, Satyamnagar,
N-5, CIDCO, Aurangabad.

6. Smt. Indumati Panditrao Gaikwad
Age : 65 years, Occu : Household,
R/o. Shashtri Colony, Sillod,
Tq. Sillod, Dist. Aurangabad.

7. Subhash Kashinath Chavhan
Age : 58 years, Occu : Agril,
R/o. Jaihind Colony, Pisadevi,
Aurangabad.

8. Hari Kashinath Pawar,
Age : 48 years, Occu : Agril,
R/o. Chincholi Limbaji, Tq. Kannad,
Dist. Aurangabad.

9. Subhash Gajaba Mangate
Age : 39 years, Occu : Service,
R/o. Plot No.1, Jaybhavani Nagar,
Aurangabad.

10. Bandu Kashinath Pawar,
Age : 39 years, Occu : Agril,
R/o. Plot No.111, Jadhavwadi,
Aurangabad.

11. Sow. Latika Vishwanath Pawar
Age : 59 years, Occu : Household,
R/o. Satyamnagar, N-5,
CIDCO, Aurangabad.

12. Vasantrao Vinayakrao Thombre
Age : 42 years, Occu : Service,
R/o. Aurangabad.

13. Sow Asha w/o. Baburao Mangate
Age : 51 years, Occu : Household,
R/o. Kannad, Tq. Kannad,
Dist. Aurangabad.

14. Sow Mandakini Baburao Pawar
Age : 48 years, Occu : Service,
R/o. Chincholi Limbaji, Tq. Kannad,
Dist. Aurangabad.

15. The Joint Charity Commissioner,
Aurangabad Region, Aurangabad.

16. The Deputy Charity Commissioner,
Aurangabad. .. Respondents

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WITH

WRIT PETITION NO.504 OF 2023

1. Ramdas Gabbu Pardeshi
Age : 65 years, Occu : Agri,
R/o. Jamdi, Tq. Kannad,
Dist. Aurangabad.

2. Yashwant Pandurang Pawar
Age : 50 years, Occu : Agril & Business,
R/o. Flat No. 28, Disha Nabhangan,
N-2, CIDCO, Aurangabad.

3. Jaywant Pandurang Pawar
Age : 47 years, Occu : Agril,
R/o. Chincholi (Limbaji), Tq. Kannad,
Dist. Aurangabad.

4. Sow. Sumanbai Pandurang Pawar
Age : 70 years, Occu : Household,
R/o. Chincholi (Limbaji), Tq. Kannad,
Dist. Aurangabad. .. Petitioners

Versus

1. Pandurang Shenfadu Pawar
Age : 82 years, Occu : Agril,
R/o. Chincholi (Limbaji), Tq. Kannad,
Dist. Aurangabad.

2. Baburao Kashinath Pawar
Age : 62 years, Occu : Nil,
R/o. Chincholi (Limbaji), Tq. Kannad,
Dist. Aurangabad.

3. Shivaji Panditrao Gaikwad
Age : 48 years, Occu : Agril,
R/o. Shastri Colony, Sillod,
Tq. Sillod, Dist. Aurangabad.

4. Ramesh Gajaba Mangate
Age : 53 years, Occu : Agril,
R/o. Shelgaon, Dahegaon,
Tq. Kannad, Dist. Aurangabad.

5. Diwakar Maruti Jadhav
Age : 50 years, Occu : Service,
R/o. 404, N-1, Cidco, Aurangabad.

6. Vishwanath Kashinath Pawar
Age : 66 years, Occu : Agril,
R/o. House No. 75, Satyamnagar,
N-5, Cidco, Aurangabad

7. Smt. Indumati Panditrao Gaikwad
Age : 65 years, Occu : Household,
R/o. Shashtri Colony, Sillod,
Tq. Sillod, Dist. Aurangabad.

8. Subhash Kashinath Chavan
Age : 58 years, Occu : Agril,
R/o. Jahind Colony, Pisadevi,
Aurangabad.

9. Hari Kashinath Pawar
Age : 48 years, Occu : Agril,
R/o. Chincholi (Limbaji), Tq. Kannad,
Dist. Aurangabad.

10. Subhash Gajaba Mangate
Age : 39 years, Occu : Service,
R/o. Plot No.1, Jaybhavani Nagar,
Dist. Aurangabad.

11. Bandu Kashinath Pawar
Age : 39 years, Occu : Agril,
R/o. Plot No.111, Jadhavwadi,
Dist. Aurangabad.

12. Sow. Latika Vishwanath Pawar
Age : 59 years, Occu : Household,
R/o. Satyam Nagar, N-5, CIDCO,
Dist. Aurangabad.

13. Vasantrao Vinayakrao Thombre
Age : 42 years, Occu : Service,
R/o. Aurangabad.

14. Sow. Asha Baburao Mangate
Age : 51 years, Occu : Household,
R/o. Kannad, Tq. Kannad,
Dist. Aurangabad.

15. Sow. Mandakini Baburao Pawar,
Age : 48 years, Occu : Service,
R/o. Chincholi (Limbaji), Tq. Kannad,
Dist. Aurangabad.

16. The Joint Charity Commissioner,
Aurangabad, Region Aurangabad.

17. The Deputy Charity Commissioner,
Aurangabad. .. Respondents

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WITH

WRIT PETITION NO.8844 OF 2022

1. Smt. Indumati Panditrao Gaikwad
Age : 70 yrs, Occu : Household,
R/o. Shastri Colony, Sillod, Dist. Aurangabad.

2. Subhash Kashinath Chavan
Age 63 years, Occu : Agri,
R/o. Jayhind colony, Pisadevi,
Aurangabad

3. Hari Kashinath Pawar
Age 54 years, Occu : Agri,
R/o Limbaji Chincholi, Tal. Kannad,
Dist. Aurangabad

4. Subhash Gajba Mangate
Age 43 years, Occu : Service,
R/o. Plot no.1, Jaibhavani nagar,
Aurangabad

5. Bandu Kashinath Pawar
Age 44 years, Occu : Agri,
R/o Plot no.111, Jadhavvadi,
Aurangabad

6. Sow Asha Baburao Mangate
Age 47 years, Occu : Service,
R/o. Aurangabad

7. Sow Mandakani Baburao Pawar
Age : 55 years, Occu : Service
R/o. Chincholi, Tq. Kannad,
Dist Aurangabad ...Petitioners

Versus

1. Pandurang Shenphadu Pawar
Age 77 yrs, Occu : Agri,
R/o. Chincholi Limbaji, Tq. Kannad,
Dist Aurangabad

2. Baburao Kashinath Pawar
Age 66 years, Occu : Agri,
R/o. As above.

3. Shivaji Panditrao Gaikwad
Age 55 years, Occu : Agri
R/o. Shastri colony, Sillod
Dist. Aurangabad

4. Ramesh Gajaba Mangate
Age 58 years, Occu : Agri,
R/o. Shelgaon, Tq. Kannad,
Dist Aurangabad

5. Diwakar Maroti Jadhav
Age 55 years, Occu : Service,
R/o 404, N-1 CIDCO, Aurangabad

6. Vasantrao Vinayakrao Thombre
Age 64 years, Occu : Service
R/o. Aurangabad

7. Vishvanath Kashinath Pawar
Age 65 years, Occu : Agri,
R/o. Satyam Nagar, N-5 CIDCO,
Aurangabad

8. Latika Vishwanath Pawar
Age 60 years, Occu : Household,
R/o. As above

9. Assistant Charity Commissioner
Aurangabad

10. Jt. Charity Commissioner
Aurangabad .. Respondents.

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Mr. N.B. Khandare, Advocate for the petitioners in
W.P. Nos.8765 of 2022 & 8764 of 2022
Mr. S.N. Morampalle, AGP for the respondent – State in all the matters.
Mr. Vivek Bhavthankar, Advocate for the Respondent No.1 in W.P. No.8764 of 2022
Mr. Vivek Bhavthankar, Advocate for the petitioner in W.P. No.8844 of 2022
Mr. Prahant K. Nikam, Advocate for the petitioner in W.P. No.504 of 2023.

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CORAM : SHARMILA U. DESHMUKH, J.

RESERVED ON : 18/01/2023
PRONOUNCED ON : 02/03/2023

JUDGMENT :-

. Rule. Rule made returnable forthwith. Mr. Vivek Bhavthankar, learned advocate waives notice for the respondent no.1 in W.P. No.8764 of 2022. At the joint request of the learned counsels appearing for the parties, the matter is heard finally at the admission stage.

2. These petitions challenge the common judgment and order dated 30.05.2022 passed by the Charity Commissioner qua the adverse findings recorded against the Petitioners in each of the petitions and are considered and decided by this common judgment. The dispute pertains to the membership and elections of

Vishwashanti Shikshan Sanstha, Chincoli (Limbaji) Tq. Kannad, District Aurangabad, a registered Public Trust ("the Trust" for short).

3. Petitioner in Writ Petition Nos.8765 of 2022 and Writ Petition No 8764 of 2002 is the Reporting Trustee in Change Report Inquiry No 161/2015 filed under Section 22 of the Maharashtra Public Trusts Act, 1950 and challenge is to the common judgment and order dated 30.05.2022 passed in Appeal No 5/2018 and Appeal No 04/2018 respectively to the extent of rejecting the change report Inquiry No 161/2015 and remand of proceedings to Deputy Charity Commissioner.

4. Writ Petition No 504 of 2023 has been preferred by four members of the Trust challenging the impugned judgment and order dated 30.05.2022 to the extent of negating the membership of the Petitioners.

5. Petitioners in Writ Petition No.8844 of 2022 are the members of the Trust who claimed to have been inducted as members of the Trust as per Resolution of the Managing Committee of the Trust dated 28.03.1994 and by impugned judgment and order dated 30.05.2022, their membership has been held invalid.

<u>The facts of the case are as under</u>:

6. A public trust by the name Vishwashanti Shikshan Sanstha, Chincholi Limbaji, Tal.Kannad, Dist. Aurangabad was registered in the year 1991 under the provisions of the Maharashtra Public Trusts Act,1950 and under the provisions of the Societies Registration Act, 1860. The Trust is running Mathura Mata Vidyalaya at Village Chincholi and more than 550 students are taking education in the school. It is claimed that at the time of the registration of the trust, there were 11 members out of which 6 persons were the founder trustees and 5 persons were members of the trust.

7. The first election of the Managing Committee was held on 25.12.1995 and a change report was filed on 27.12.1995 bearing Change Report Inquiry No.6 of 1996 by the reporting trustee Pandurang Pawar. Respondent No.1 - Baburao Kashinath Pawar objected to the change report on the ground of validity of the election and after hearing the parties the Assistant Charity Commissioner rejected the change report by order dated 15.09.1996. Fresh elections were thereafter held on 29.06.1997 and the change was reported by Vishwanath Kashinath Pawar - respondent no.5 in Writ Petition Nos.8764 of 2022 and 8765 of 2022, which was registered as Inquiry No.1083 of 1997 which came to be accepted vide judgment and

order dated 30.03.2002. The Change Report Inquiry No.1083 of 1997 reflects the membership of 11 new members whose membership is claimed to have been approved in the meeting purported to have been held on 28.03.1994. Pandurang Shenfadu Pawar - reporting trustee raised an objection to the said change report, however, the Change Report Inquiry No 1083 of 1997 came to be accepted and the challenge upto this Court came to be negated.

8. In the interregnum in the year 1996, an Application No.126 of 1996 was filed by Baburao Pawar – the Respondent No.1 in Writ Petition No.8765 of 2022 and Writ Petition No 8764 of 2022 under Rule 13 (4) of the Maharashtra Pubic Trusts Rules for deleting the name of Ramdas Gabu Pardeshi from Schedule I. The application was objected by Pandurang Pawar stating that Baburao Pawar has scored out the name of Ramdas Pardesi and inserted the name of Ramdas Pawar and has committed manipulation in the office record and tampered with evidence. By order dated 05.05.1997 the Application No.126 of 1996 came to be allowed deleting the name of Ramdas Pardeshi from Schedule I.

9. In the year 1999, Regular Criminal Case No.52 of 1999 was registered as against Baburao Kashinath Pawar alleging

fabrication of the record of the trust and by judgment and order dated 30.07.2013 Baburao Kashinath Pawar was convicted for the offences under Section 420, 468 and 471 of Indian Penal Code by the Judicial Magistrate First Class as against which an appeal was preferred before the Additional Sessions Judge and vide judgment and order dated 19.12.2019 Baburao Kashinath Pawar was acquitted against which it is claimed that appeal is filed and pending before this court.

10. On expiry of the term of the Managing Committee, elections were held for the period 2002-2007 and change report was submitted. However, after 2007 no elections were held and the members of the trust filed an application under Section 41A of the Maharashtra Public Trusts Act which application was registered as Enquiry No. 251 of 2013 and vide order dated 26.03.2014, the Assistant Charity Commissioner directed the founder trustees to hold the election of Managing Committee in accordance with the statutory rules and regulations within three months from the date of the order and to submit the change report thereafter. The order dated 26.03.2014 came to be challenged before this Court by Baburao Kashinath Pawar and others by way of Writ Petition No.3220 of 2014 which came to be disposed of by order dated 23.04.2014 in view of

the joint pursis submitted by the parties stating that they had no objection to the elections if the elections are held under the supervision and control of the Assistant Charity Commissioner or his nominee. The election was declared on 05.08.2014 which led to filing of two writ petitions i.e. Writ Petition No.7457 of 2014 and Writ Petition No. 7461 of 2014. Writ Petition No.7457 of 2014 was filed by the 10 persons whose names were not included in the list of members and claimed membership as per the Resolution passed in the meeting dated 28.03.1994 whereas Writ Petition No.7461 of 2014 was filed by Baburao Kashinath Pawar and three others. By order dated 12.09.2014 interim directions were issued by this Court directing the elections to be held as per the programme dated 05.08.2014 and the votes cast by the petitioners in writ petition no.7457 of 2014 to be preserved in a separate ballot box and the votes cast by the other members of the trust be preserved separately. The elections were held on 13.09.2014 and on 04.03.2015. The two writ petitions were disposed of by this Court by order dated 04/03/2015 with certain directions contained in para-10 of the order which were issued in agreement with parties to both the petitions which reads as under:

> "10. This court under its extra-ordinary jurisdiction cannot go into and decide the issue at first instance as to whether the petitioners and other members were rightly enrolled as members

of the trust. However, the parties to the present petitions, after hearing of the petitions for sometime, are in agreement to the following arrangements.

(a) The management of the trust shall be by the managing committee appeared in schedule-I at the time of registration of the trust.

(b) The results of the elections as were held on 13-09-2014 be declared without counting the votes which are kept in sealed envelope as ordered by this Court on 12-09-2014.

(c) Such result will be provisional in nature and the group which has received majority of the votes shall file change report before the Assistant Charity Commissioner.

(d) The election officer who is custodian of the votes kept in sealed envelope shall transfer the entire record to the Assistant Charity Commissioner who shall proceed to decide the said enquiry report.

(e) The Assistant Charity Commissioner shall first dwell upon the controversy as regards the status of the members, particularly having regard to the finding recorded by the criminal court in Regular Criminal Case No.52 of 1999 decided on30-07-2013.

(f) The parties hereto in clear terms agree that it is the managing committee recorded in Schedule-I which shall run administration of the trust and rest of the parties shall keep themselves away from the management of the trust and shall not interfere in the administration and management in direct or indirect manner.

(g) After completing enquiry as ordered hereinabove, having regard to outcome of enquiry about the status of the members that would be decided by the Assistant Charity Commissioner, he shall be entitled to consider the votes kept in sealed envelope, provided those persons are declared to be members of the trust.

(h) In the eventuality that the votes kept in sealed envelope, since are by virtue of secret ballot, could not be identified as to which voter has cast the same, the Assistant Charity Commissioner shall take recourse to such modalities as shall be desirable and available under the law and in the facts and circumstances of the case for declaring the result of election of the trust.

(i) The Assistant Charity Commissioner shall make every

> endeavour to decide the issue as regards validly enrolled members and finality to the change report within a period of six months from the date of submission of the proceedings of change report.
>
> (j) It is expected of the election officer to declare the results within three days of receipt of this order and submit record of the same to the Assistant Charity Commissioner within a period of one week thereafter.
>
> 11. With observations and directions as above, both the writ petitions stand disposed of."

11. A change report came to be submitted by the reporting trustee Pandurang Pawar- as Inquiry No.161 of 2015. Objections were raised by some of the trustees to the said change-report on the ground that they were admitted as members in the meeting held on 28.03.1994. Change report Inquiry No.161 of 2015 was decided by the Dy. Charity Commissioner by judgment and order dated 14.12.2017 holding that the 11 members purportedly admitted to the membership in the meeting dated 28.03.1994 are not legal and valid members. The order passed in the change report Inquiry No.161 of 2015 was challenged by some of the affected parties by filing Appeal No.4 of 2018 and 5 of 2018 under Section 70 of the Maharashtra Public Trusts Act, 1950 which were heard together and decided by the impugned judgment and order dated 30.05.2022, dismissing the appeal to the extent of the claim of the approval of membership of 11 members in the meeting dated 28.03.1994 and remanding the matter to the Deputy Charity Commissioner relating to the validity and

legality of the elections held on 13.09.2014 by holding that four members claiming to be founder members are not members of the Trust.

12. Heard Mr. N.B. Khandare and Mr. Prashant K. Nikam, learned counsels appearing for the petitioners in the respective matters and Mr. S.N. Morampalle, learned AGP for the respondent – State and Mr. Vivek Bhavthankar, learned counsel appearing for the respective parties in the respective matters.

13. Mr. N.B. Khandare, the learned counsel for the petitioners submits that the appeals before Joint Charity Commissioner challenged the findings of Deputy Charity Commissioner in change-report Inquiry No.161 of 2015. The Deputy Charity Commissioner had framed three issues firstly as regards the validity of 11 members who were purportedly admitted in a meeting held on 28.03.1994 and secondly as to the validity of the elections held on 13.09.2014. He would contend that Joint Charity Commissioner ought to have confined the determination to the two issues framed by the Deputy Charity Commissioner and could not have gone into the validity of membership of other members who had voted in the said meeting while deciding the issue about validity

of elections. He would further submit that the validity of the other members, apart from the 11 members claiming to have been inducted purportedly in the meeting held on 28.03.1994, has been decided by misinterpreting the application filed for registration of the trust.

14. Learned Counsel for the petitioners would further submit that the Jt. Charity Commissioner has failed to take into consideration the documents produced by the petitioners i.e. register of the members, the receipts evidencing the payment of the subscription by the members which are annexed at page nos.60 to 90 of the Writ Petition No.8765 of 2022. He would further submit that membership of Ramdas Pardeshi has been held to be invalid on the ground of the order passed in Misc. Application No.126 of 1996, whereas the said application was filed only to delete his name as a founder trustee from schedule-1 as Ramdas Pardeshi had not consented to become a founder trustee and was only a member of the trust.

15. Mr. Prashant K. Nikam, learned advocate appearing for the petitioners in Writ Petition No.504 of 2023 has adopted the submissions of Mr. N.B. Khandare, learned advocate appearing for the petitioners in Writ Petition Nos.8764 of 2022 and 8765 of 2022 and

in addition would submit that the deposition of Baburao Pawar would show that they were 11 members at the time of the registration of the trust, which was not considered by the Jt. Charity Commissioner. He would further submit that in the absence of any objection, status of the founder members was not required to be gone into and the Petitioners in Writ Petition No 504 of 2023 had no occasion to make submissions in regard to their membership either before the Dy. Charity Commissioner or before the Jt. Charity Commissioner. He would further submit that there was no question of remand as the elections were validly held. Upon a query posed by this Court as regards his submission on violation of principles of natural justice as the Petitioners in Writ Petition No 504 of 2023 were not heard, he submits that he is not pressing this submission and the matter can be decided in this Court.

16. Per contra, Mr. V.V. Bhavthankar, the learned counsel for respondent no.1 - Baburao Pawar has assailed the finding of the Charity Commissioner as regards invalidating membership of 11 members and has supported the finding as regards the invalidating the membership of other 4 members. He would further submit that the first elections were held during the period 1991 to 1996 and the names of 7 trustees are mentioned in Schedule-I. He would further

submit that after the elections on 29.06.1997, the Inquiry No.1083 of 1997 for recording the change was accepted and it is a matter of record that by resolution dated 28.03.1994 new 11 members were accepted as members of the trust. He would further submit that the Change Report Inquiry No.1083 of 1997 was accepted by the Asstt. Charity Commissioner as against which the trust Appeal No.12 of 2002 was dismissed by the Jt. Charity Commissioner on 08.06.2002 as against which an appeal was filed before the District Court which came to be dismissed on 04.08.2003 and even the First Appeal No.145 of 2003 filed by Pandurang Pawar was dismissed by this court and hence the Change Report No. 1083 of 1997 has attained finality in which the 11 members which were shown to be the members. He would further submit that the fresh elections were held for the period 2002 to 2007 in which these 11 members along with the 7 founder trustees had voted and the change report was accepted in Trust Appeal No.43 of 2004. He would further urge that in view of these two change-reports accepting the membership of the 11 members and 7 founder trustees, the finding of the Dy. Charity Commission and Jt. Charity Commissioner invalidating the membership of these 11 members cannot be sustained. He would further submit that respondent no.1 - Baburao Pawar was acquitted in Criminal Appeal No.187 of 2013 in which a specific finding is given that the documents which were relied upon to conclude that the documents Article 'A' and 'B' are forged were maintained by President, who has no authority to maintain such documents. He would further submit that the votes cast by 11 members being valid members should be considered.

17. He has invited the attention of this Court to the finding of the Jt. Charity Commissioner at page no.231 whereby Jt. Charity Commissioner has considered the judgment and appeal and has held that it cannot be inferred that the Baburao Pawar has prepared the false report. He would further submit that on the basis of the change report it can be inferred that in two election proceedings 11 members had participated.

18. In rejoinder the learned counsels for the petitioners would urge that these 11 members had not participated in elections for the term 1997 - 2002. They would further contend that the findings of the Election Officer produced at page no.251 of the Writ Petition No.8764 of 2022 is beyond jurisdiction as the election officer cannot decide the membership and it is only based on the voters list and the validity of the 11 members cannot be upheld.

19. In support of his contention, he relies upon two decisions of the Apex Court in the case of **Patel Kantilal Parshottamdas (Dead) and Others vs. Jitenderkumar Nanjibhai Mistry (Dead) Through Legal Representatives and Others**, (2017) 13 SCC 529 and **Mir Maqsood Ali vs. Syed Ibrahim and another**, (2011) 14 SCC 39.

20. Considered the rival submissions of the parties.

21. The issues which arise for consideration in the present case is firstly as regards the validity of the membership of 11 members whose membership is claimed to have been approved in the meeting held on 28.03.1994, secondly as to whether Jt. Charity Commissioner in appeal under Section 70 of the Maharashtra Public Trusts Act could have gone into the issue of the validity of 4 founder members and if the answer to the second issue is in the affirmative, the validity of the membership of four members claiming to be the founder members.

22. From the facts of the case, it appears that there are two rival member groups in the Trust one headed by Pandurang Pawar and other headed by Baburao Pawar. An application for registration of the Trust came to be filed on 24.09.1990 under Section 18 of the

Maharashtra Public Trusts Act. In Column 2(1) of the application, the following persons are shown as the Trustees and the Managing Committee members:

Pandurang Shenfadu Pawar	-	President,
Divakar Maroti Jadhav	-	Vice President,
Baburao Kashinath Pawar	-	Secretary,
Ramesh Gajaba Mangate	-	Treasurer,
Ramrao Gabu Pardeshi	-	Deputy Secretary,
Sitaram Dhondu Pawar	-	Member
Shivaji Panditrao Gaikwad	-	Members.

The Memorandum of Association of the Public Trust has been annexed at annexure 'B' to the application and the name of Ramdas Gabu Pardeshi is erased from the Memorandum of Association and name of Namdeo Raibhan Pawar has been substituted.

23. At this stage it is necessary to refer to the relevant provisions of the Trust Act and Societies Registration Act as the issue of membership is in question. Section 18 of the Maharashtra Public Trusts Act, r/w Rule 6 of The Maharashtra Public Trusts Rules provides for particulars to be included in the application for registration of trust and Section 1, Section 2, Section 15 of the

Societies Registration Act r/w Rule 4 of the Societies Registration (Maharashtra) Rules, 1971 deals with the formation of the society and membership, which reads thus:

"**18. Registration of Public Trusts. –**

(1) It shall be the duty of the trustee of a public trust to which this Act has been applied to make an application for the registration of the public trust.

(2) Such application shall be made to the Deputy or Assistant Charity Commissioner of the region or sub-region within the limits of which the trustee has an office for the administration of the trust or the trust property or substantial portion of the trust property is situated, as the case may be.

(3) Such application shall be in writing, shall be in such form and accompanied by such fee as may be prescribed.

(4) Such application shall -

(a) in the case of a public trust created before this Act was applied to it, be made, within three months from the date of the application of this Act, and

(b) in the case of a public trust created after this Act comes into force, within three months of its creation.

(5) Such application shall inter alia contain the following particulars:—

(ai) the designation by which the public trust is or shall be known(hereinafter referred to as the name of the public trust),

(i) the names and addresses of the trustees and the manager,

(ii) the mode of succession to the office of the trustee,

(iii) the list of the moveable and immovable trust property and such descriptions and particulars as may be sufficient for the identification thereof,

(iv) the approximate value of moveable and immovable property,

(v) the gross average annual income of the trust property estimated on the income of three years immediately preceding the date on which the application is made or of the period which has elapsed since the creation of the trust, whichever period is shorter,

(vi) the amount of the average annual expenditure in connection with such public trust estimated on the expenditure incurred within the period to which the particulars under clause(v) relate,

(vii) the address to which any communication to the trustee or manager in connection with the public trust may be sent,

(viii) such other particulars which may be prescribed:

Provided that the rules may provide that in the case of any or all public trusts it shall not be necessary to give the particulars of the trust property of such value and such kind as may be specified therein.

(6) Every application made under sub-section(1) shall be signed and verified in the prescribed manner by the trustee or his agent specially authorized by him in this behalf. It shall be accompanied by a copy of an instrument of trust, if such instrument had been executed and is in existence.

(6a) Where on receipt of such application, it is noticed that the application is incomplete in any particulars, or does not disclose full particulars of the public trust, the Deputy or Assistant Charity Commissioner may return the application to the trustee, and direct the trustee to complete the application in all particulars or disclose therein the full particulars of the trust, and resubmit it within the period specified in such direction; and it shall be the duty of the trustee to comply with the direction.

(7) It shall also be the duty of the trustee of the public trust to send a memorandum in the prescribed form containing the particulars, including the name and description of the public trust, relating to the immovable property of such public trust, to the sub-registrar of the sub-district appointed under the Indian Registration Act, 1908, in which such immovable property is situate for the purpose of filing in Book No. I under section 89 of that Act.

Such memorandum shall be sent within three months from the date of creation of the public trust and shall be signed and verified in the prescribed manner by the trustee or his agent specially authorized by him in this behalf."

Rule 6 :-

"6. Application for registration of a public trusts under section 18. - (1) The application for registration of a public trust, in addition to the particulars specified in clauses (i) to (vii) of subsection (c) of section 18, shall contain the following particulars :

(a) Particulars of documents creating the trusts.

(b) Particulars other than documents about the creation or origin of the trust.

(c) Objects of the trust.

(d) Sources of income of the trust.

(e) Particulars of encumbrances, if any, on trust property.

(f) Particulars of the scheme, if any relating to the trust.

(g) Particulars of title deeds pertaining to trust property and the names of trustees in possession thereof.

The Charity Commissioner may, however, direct that in the case of any or all public trusts it shall not be necessary to give the particulars of the trust property of such value and such kind as may be specified by him.

(2) The application shall be in the form of Schedule II hereto.

(3) The application in addition to a copy of the instrument of trust, shall be accompanied by a copy of the scheme, if any, in operation in regard to the public trust.

(4) Every person signing the application shall subscribe on solemn affirmation before the Deputy or Assistant Charity Commissioner, a Justice of the Peace, [an Executive Magistrate or a Notary appointed under the Notaries Act, 1952 for the State of Maharashtra] that the facts mentioned in the said application are true to the best of my knowledge and belief.

(5) The fee to accompany the application shall be in cash and the following amounts:

		Rs.
(i)	when the value of the property of a public trust does not exceed Rs.2,000	3
(ii)	when the value of the property of a public trust exceeds Rs.2,000 but does not exceeds Rs.5,000.	5

(iii)	when the value of the property of a public trust exceeds Rs.5,000 but does not exceeds Rs.10,000.	10
(iv)	when the value of the property of a public trust exceeds Rs.10,000 but does not exceeds Rs.25,000.	20
(v)	when the value of the property of a public trust exceeds Rs.25,000.	25

Provided that no such fee shall be charged in the case of public trusts deemed to have been registered under section 28.

(6) When on an application for registration of a public trust made under section 18, it has been decided by the Deputy or Assistant Charity Commissioner or any other competent authority under the provisions of the Act, that the trust does not exist or that the trust is not a public trust to which the Act applies or that the value of the property of the public trust is less than the amount for which registration fee has been paid, the Deputy or Assistant Charity Commissioner or such other authority may direct the refund of the whole of the fee or such part of the fees as has been paid in excess of the fee payable under sub-rule (5), as the case may be, to the applicant.

[(7) The memorandum referred to in subsection (7) of section 18 shall be in the form of Schedule IIA hereto. Such memorandum shall be verified in the manner prescribed under sub-rule (4).]"

Section 1, Section 2, Section 15 of the Societies Registration Act and Rule 4 of the Societies Registration (Maharashtra) Rules, 1971 :

"1. Societies formed by memorandum of association and registration.— Any seven or more persons associated for any literary, scientific or charitable purpose, or for any such purpose as is described in section 20 of this Act, may by subscribing their names to a memorandum of association and filing the same with the Registrar of Joint-stock Companies 4[4] [* * *] form themselves into a society under this Act.

2. Memorandum of association.-

The memorandum of association shall contain the following things (that is to say)—

the name of the society:

the objects of the society:

the names, addresses, and occupations of the governors, council, directors, committee or other governing body to whom, by the rules of the society, the management of its affairs is entrusted.

A copy of the rules and regulations of the society, certified to be a correct copy by not less than three of the members of the governing body, shall be filed with the memorandum of association.

15. Member defined Disqualified members.– For the purposes of this Act a member of a society shall be a person who, having been admitted therein according to the rules and regulations thereof, shall have paid a subscription or shall have signed the roll or list of members thereof, and shall not have resigned in accordance with such rules and regulations; but in all proceedings under this Act no person shall be entitled to vote or to be counted as a member whose subscription at the time shall have been in arrear for a period exceeding three months.

<u>Rule - 4</u> :

4. Memorandum of association to be filed under Section 2. -

(1) The memorandum of a association of society may contain the following declaration. that is to say -

"We, the following persons, being desirous of forming ourselves into a society under the Societies Registration Act, 1860, have subscribed our names to this memorandum".

(2) Such declaration shall be signed by any seven or more persons associated with the society. It shall also be dated."

24. The Memorandum of Association of the Trust sets out the mode of acquiring membership of the Trust and the classification of members, holding of meetings etc. The relevant clauses are reproduced hereinbelow:

"**4. <u>सभासदत्व व त्याचे नोंदणीची पध्दत</u>** :

कोणत्याही 18 वर्षांवरील स्त्री पुरुषास संस्थेची नियमावली मान्य असल्यास व संस्थेने ठरवून दिलेली फी भरल्यास सभासद होता येईल. परंतु अशा सभासदाने प्रवेश अर्ज भरुन दिल्यानंतर कार्यकारी मंडळ त्यावर बहुमताने निर्णय घेईल व कार्यकारणीने त्यास सभासद घेण्याचे ठरविल्यानंतर फी स्वीकारली जाईल.

5. **<u>सभासदाचे प्रकार</u>** :

संस्थेचे खालीलप्रमाणे सभासद असतील.

अ. आजीव सदस्य सभासद

ब. सर्वसाधारण सभासद

क. हितचिंतक सभासद

अ. एकाच वेळेस संस्थेस रु.1001/- (रुपये एक हजार एक) देणारी व्यक्ती आजीव सभासद समजली जाईल.

ब. **सर्वसाधारण सभासद** :

वार्षिक वर्गणी रु.101/- देणारी व्यक्ती सर्वसाधारण सभासद होईल.

क. संस्थाविषयी आस्था व काही तरी शारिरिक कामे करण्याची हौस असेल तर अशा सभासदास नॉमिनल शूल्क रु.25/- भरुन एक वर्षासाठी हितचिंतक सभासद करुन घेतले जाईल.

"10. **संस्थेचे कार्यकारी मंडळ पदाधिकारी व त्याची रचना** :–

कमीत कमी 7 व जास्तीत जास्त 11 सभासदाचे कार्यकारी मंडळ असेल, त्यात (1) अध्यक्ष, (2) उपाध्यक्ष, (3) सचिव, (4) सहसचिव, (5) कोषाध्यक्ष व बाकीचे सदस्य यांचा समावेश होईल.

1. दर पाच वर्षांनी कार्यकारिणीची निवड होईल.

2. कार्यकारिणीतील सभासदांना 7 दिवस अगोदर पुर्व सुचना देवून मासिक बैठक बोलावण्यात येईल. आवश्यकता असल्यास दरमहा बैठक घेण्यात येईल. सुचना आर.पी.ए.डी. ने पाठविली जाईल किंवा नोटीस बुकावर सही घेवून नोटस दिली जाईल.

3. कार्यकारणीचे 2, 3 सभासद उपस्थित असले तरी गणपुर्ती पुर्ण होईल.

4. गणपुर्ती अभावी त्याच ठिकाणी अर्ध्या तासानंतर बैठक घेण्यात येईल. त्यावेळी गणपुर्तीचे बंधन राहणार नाही.

5. समसमान मते पडल्यास अध्यक्षांच निर्णायक मत घेण्याचा अधिकार राहील.

6. महत्त्वाच्या प्रश्नांवर निर्णय घेण्यासाठी चोवीस तास अगोदर सभासदांना सूचना देवून अध्यक्षास किंवा चिटणीस यांना बैठक घेता येईल."

25. In the background of the statutory provisions and the Memorandum of Association, the validity of the four members claiming to be founder members as well as the eleven members who

claim to have been admitted pursuant to a meeting dated 28.03.1994 is required to be considered.

26. First and foremost the submission of the Petitioner is that the Jt. Charity Commissioner while exercising appellate powers under Section 70 of the Maharashtra Public Trusts Act could not have gone into the issue of validity of four members while examining the issue of validity of election. In an inquiry under Section 22 of the Act, it is incumbent on the Enquiry Officer to consider whether change has occurred and whether the body of persons who appointed the trustees is valid body of persons and as such, I do not find any infirmity in the inquiry by the Jt. Charity Commissioner into the validity of the membership of the persons who had participated in the election dated 13.09.2014. In this context it will be apposite to refer to two decisions of this Court in the case of **Jagatnarayansingh Swarupsigh Chthere & Ors vs Swarupsingh Education Society 1980 Mh.L.J 372 and Karishnarao Kanhaiya Naidu & Ors vs Jeevraj Bhairavlal Agarwal, Writ Petition No.2956 of 1997 dated 21.11.2009**. In the decision of **Jagatnarayansingh** (supra) this Court in paragraph 8 held as under:

> "8. Therefore, though prima facie it appears to be a mere change, the scheme of the Act contemplates qua the change under consideration an inquiry of a Judicial character with an appeal therefrom to the Charity Commissioner and a further application under section 72 to the District Judge and

> yet another appeal therefrom to the High Court against which appellate judgment of the High Court, a still further appeal may, in a given case, lie under the letters patent. Such being the Judicial scrutiny and the extensive grant of the inquiry under section 22 of the Act, it is obvious that this inquiry can not be a mere factual process or one purely formal in nature. Investigation into the legality and validity of the change is implicit. The inquiry is a judicial process pertaining the character of judicial adjudication. An elemental perquisites or the minimal requirement of a judicial inquiry and a judicial process is compliance with the principles of natural justice. These principles, though not embodies rules, constitute none the less an important facet and pivot of the judicial process. Inquiry behind the back of an aggrieved party is best avoided lest it stands vitiated. One affected must be noticed an heard. Basic lacuna in that respect may well render the inquiry and or the order therein almost non est at least qua the aggrieved absent party left unheard and, therefore, unheeded."

27. And in the decision of **Karishnarao Kanhaiya Naidu** (supra) this Court in paragraph 13 held as under:

> "13. Shri Manohar learned counsel submits that all arguments of Shri Khapre about validity of the enrollment of new members can be negatived for the simple reason that the Deputy Charity Commissioner in Enquiry No. 8 of 1991 has specifically held that such enrollment was invalid. This application was moved by Shri C.G. Choube and others. They have made a prayer that 78 members should be declared as legally enrolled. Therefore the material question that was being decided by the Deputy Charity Commissioner was about validity of the enrollment of new members. He held that new members in category of sympathiser were not properly enrolled. He held that these new members had paid Rs. 250/- in one lumpsum which was in breach of the scheme. Clause IV of the said scheme is already quoted above. If the clause is read it would be clear that a person becomes sympathiser member only when he pays 50th installment of Rs. 5/-. Anybody paying Rs. 250/- in lumpsum cannot be enrolled in category of sympathiser. He at the most may become an ordinary member. This finding of the Charity Commissioner appears to me to be correct. Shri Khapre learned counsel submits that this decision is a void decision as according to him the Charity Commissioner has no right to decide the issue of membership. Decision has been rendered by a Charity Commissioner and it is not challenged or set aside. It cannot be said to be an order

> which is non est and one without jurisdiction. Charity Commissioner in fact has a power to decide the question of validity enrollment of members since the question would always be whether the office bearers are elected by a valid electorate. If the persons who are not validly included in electoral roll elect then election by those persons would be invalid. Therefore the Charity Commissioner would certainly have a right to go into the question of validity of electoral roll if called upon to decide the same. Charity Commissioner has always an over all control over any trust. Therefore such an act on part of the Deputy Charity Commissioner to my mind was not one without jurisdiction. At the most it could be said that the Charity Commissioner may have committed an error of law. An error of law does not render any order invalid. Authorities below have rightly held that the enrollment was improper and therefore the election was improper."

28. It is clear from the decisions above that while holding enquiry under Section 22 of the Act, it is incumbent to hold a full fledged inquiry which in a given case may entail an examination into the validity of the electoral roll. As such the submission of the reporting trustee that the Jt. Charity Commissioner while considering the validity of the elections ought not to go in the validity of the membership of the founder members is liable to be rejected. The Jt Charity Commissioner is empowered to examine the findings of the Asst. Charity Commissioner as regards the validity of the elections and for the said purpose to inquire into the validity of the electoral roll.

29. Having held that there is no infirmity on part of the Jt. Charity Commissioner to inquire into the validity of the electoral roll,

it is now necessary to examine the issue of membership. The Petitioners in Writ Petition No 504 of 2023, i.e. Yashwant Pandurang Pawar, Jaywant Pandurang Pawar, Sumanbai Pandurang Pawar and Ramdas Gabbu Pardesi are held ineligible by the Joint Charity Commissioner. Perusal of the impugned order indicates that the Jt. Charity Commissioner placed reliance on the observations of the Asst. Charity Commissioner in Change Report Inquiry No 1083/1997 that illegal record has been maintained. The Jt. Charity Commissioner took into consideration the Change Report for the year 2002 to 2007 and held that while considering the validity, the members whose names were mentioned in registration application with consent letters is to be considered. The Jt. Charity Commissioner held that on registration application property of Trust is mentioned at Rs 707/ and no list of 11 members is filed by the President under The Societies Registration Act, 1860. As regards the name of Ramdas Pardesi, the Jt. Charity Commissioner held that his name was deleted vide Application NO 126/1996 which has attained finality.

30. As substantial reliance has been placed on the impugned order as the order has been passed in Charge Report Inqury No.1083 of 1997, it will be necessary to consider the findings therein.

31. The Asst Charity Commissioner while dealing with the Change Report Inquiry No 1083 of 1997, by judgment dated 30.03.2002 framed the following issues:

i) Whether the reported change in legal and valid?

ii) Whether the election officer has conducted the election as per bye laws of the trust?

iii) What order?

32. The Issue No. i) and ii) were answered in the affirmative. The change report was in respect of elections for the term 1997 to 2002. While considering the validity of the reported change, the Asst. Charity Commissioner has held that there are only seven founder members of the trust and that at the time of registration of trust, copy of schedule was submitted which was as per Rule 15 of Societies Registration Rules and Schedule H bears names of seven persons. It was observed that in the application for registration the amount is shown as Rs 707/- and if there are six life members and five ordinary members, the amount would have been shown as Rs 6511/ and as such there were seven founder members of the trust and those are ordinary members. The Asst Charity Commissioner held that the name of Ramdas Pardeshi has been deleted in

Application No 126 of 1996. It is not disputed that the order of the Asst. Charity Commissioner dated 30.03.2002 has attained finality till this Court.

33. Considering the provisions of Section 18 of the Maharashtra Public Trusts Act read with Rule 6 of the Maharashtra Public Trusts Rules, the application for registration is required to include the names of the trustees / the Managing Committee Members which as per the application of the registration has been properly included. There is no requirement to list the members of the trust in the application, however the list of members is required to be submitted under Rule 15 of the Societies Registration Act, 1960. The Asst Charity Commissioner in Change Report Enquiry No 1083 of 1997 has observed that illegal record is maintained by the President. The Election Officer while conducting the election for the term 1997 to 2002 has concluded that there were 18 members, which included seven founder members. Reliance was placed on Schedule VI in inquiry under Section 19 of the Trust Act.

34. In Inquiry No.161 of 2015, the evidence was adduced on behalf of Pandurang Pawar and non-applicant Baburao Kashinath Pawar. During the proceedings before the Assistant Charity

Commissioner, the issue was as regards the validity of membership of 11 members who claimed to have been admitted by virtue of a resolution of the Managing Committee held on 28.03.1994 and the validity of the election held on 13.09.2014. In these proceedings, there was no challenge to the validity of the four members, who claimed to be the founder members at the time of the registration of the trust. In these proceedings, Baburao Pawar adduced evidence. He has deposed that a general body meeting was held on 28.03.1994 in which membership of 11 members was accepted. He has further deposed that as far as Ramdas Pardeshi is concerned, Pandurang Pawar had prepared bogus record and on the basis of bogus record, a Change Report No.6 of 1996 was submitted, which was objected by Baburao Pawar and in the inquiry proceedings, the record was held to be bogus which findings were upheld upto this Court. He has further deposed that taking advantage of the fact that the name of Ramdas Pardeshi was remained to be struck off from part of the registration application, Pandurang Pawar had filed the Change Report and as such Baburao Pawar filed Rectification Application No.126 of 1996 which came to be accepted. The challenge to the Change Report No.126 of 1996 was negated right upto this Court. He has further deposed that as recorded in his objection at the time of establishment of the trust there were only 11 members. The Assistant Charity

Commissioner has considered the evidence and has observed that in the cross-examination Baburao Pawar has accepted that the resolution which is alleged to have been passed in the general body meeting dated 28.03.1994 has not been produced in the present proceedings and on 28.03.1994 there was no general body meeting. Baburao Pawar has further admitted in the cross-examination that 11 members who claimed to have been granted membership by resolution passed in the meeting dated 28.03.1994, the applications of those 11 members have not been produced in the inquiry proceedings. Shivaji Gaikwad - another witness who was examined by Baburao Pawar in his support, has deposed that on 28.03.1994 the meeting was held of the Managing Committee in which the 11 members were admitted as life members and in the general body meeting dated 23.10.1994, the said membership was approved. However, in the cross-examination he was unable to depose as to the members who were present in the meeting. He was further unable to depose as to whether any applications were made by these 11 members. In the cross-examination he has admitted that the application of these 11 members has not been produced in the inquiry proceedings and he is unable to recollect as to who has recorded the minutes of the meeting. Mr. Vishwanath Pawar, who was other witness examined by Baburao Pawar has stated in the cross examination that he had received the notice of the general body meeting held on 28.10.1994 and that he was present in that meeting. He has further admitted in the cross-examination that the applications filed by the 11 members have not been produced in the present proceedings and in all that has been produced in support of his deposition that 11 members were admitted in the meeting held on 28.03.1994 are the receipts nos.29 to 34 and 36 to 39, which had been marked as Article 'A' to 'I'. He has further admitted in the cross-examination that the notice of calling for the meeting has not been produced in the present proceeding. Baburao Pawar below Exh.108 had produced the certified copy of the register of the minutes of the meeting and as per the register on 28.03.1994 the Secretary of the trust had read out the applications received from the 11 members and approval of 11 members as life members came to be granted by resolution. The proposer of the said resolution was Pandurang Pawar and it was seconded by Ramesh Mandke. Below Exh.105, Baburao Pawar has produced the certified copy of the register of minutes of the meeting held on 23.10.1994, which shows that as per the resolution no.4 on 28.03.1994 the membership of the 11 members came to be approved. The Assistant Charity Commissioner has noted that in respect of these meetings the non-applicant has not been able to prove as to who has issued the notice for the said meetings and whether all the members had received the copy of the notice. The Assistant Charity Commissioner has considered the various clauses of the memorandum of the association and in particular clause 10 which provides for the sending of the notice prior to 8 days of the meeting.

35. It is evident from the evidence of Baburao and Shivaji Gaikwad that there is a discrepancy as to the meeting which was held on 28.03.1994 inasmuch as Shivaji Gaikwad deposes that the meeting which was held on 28.03.1994 was a meeting of the Managing Committee, whereas Baburao Pawar deposes that the meeting held on 28.03.1994 was meeting of the general body. Both these witnesses have not been able to show the compliance with clause 10 as far as the sending of the notices of the meeting and the manner in which the same was sent and as to the receipt of the notices by the members of the trust. Further membership applications which have been alleged to have been filed by these 11 members have not been produced on record.

36. As regards the subscription amount alleged to have been paid by these 11 members is concerned, Baburao Pawar has produced on record below Exh.217 the cash book of the trust, which shows that

on 28.03.1994 11 members had deposited Rs.1001/- and instead of depositing the said amount in the bank Baburao Pawar - the respondent no.1 had taken back the sum of the Rs.11,011/- as advance amount. In the cross-examination, non-applicant Baburao has admitted that how much amount has been paid as advance has not been noted in the records of the trust. Further the Assistant Charity Commissioner on consideration of the cash book has noted that at page no.48 in the receipt column the entry of receipt of membership fees has been struck off and on the page no.48 there is no sign of the treasurer.

37. Considering the above, it can be said that there is no application for membership which has been produced on record. There is no evidence about the payment of the subscription amount and the reliance is placed on the extract of the register of the minutes of the meeting alleged to have been held on 28.03.1994. However, there is no evidence produced as to the holding of such meeting inasmuch as there is no evidence produced of the notices issued in respect of those meetings in accordance with the clause 10 (2) of the Memorandum of Association, no details as to the dispatch of the notices to the members of the trust and the receipts of these notices. Considering the evidence which has been produced on record, it is

evident that the non-applicant Baburao has not been able to prove that the meeting of the Managing Committee had been held on 28.03.1994. As the holding of meeting has not been proved, non-applicant Baburao has not been able to prove that in the said meeting, the membership of the 11 members was approved by the Managing Committee.

38. As regards the criminal proceedings which were initiated against Baburao for the offence under Sections 420, 468 and 471 of the Indian Penal Code is concerned, Baburao has been acquitted of the said proceedings which acquittal has been upheld by this Court. The learned counsel for the respondent on the basis of the acquittal submits that as there is no forgery of the documents, the membership of the 11 members cannot be faulted with. In criminal proceedings, it is the duty of the prosecution to prove the offence beyond reasonable doubt, which is not case in civil proceedings in which the adjudication is on the basis of preponderance of probabilities. Considering the evidence which has been brought on record in the inquiry proceedings, it cannot be said that Baburao Pawar has been able to establish the approval of the membership of 11 members in the meeting purported to be held on 28.03.1994.

39. This Court by order dated 04/03/2015 passed in Writ Petition No.7457 of 2014 and Writ Petition No.7461 of 2014, on agreement between the parties, directed an inquiry into the status of petitioners in Writ Petition No.7457 of 2014. The status of these members was specifically in question in Inquiry No.161 of 2015 and it was incumbent to prove all necessary records in support of Membership. The evidence on record shows that Baburao Pawar has failed to prove that the Membership of eleven members was approved in the meeting held on 28.03.1994. The submissions of learned counsel Mr. V.V. Bhavthankar that in Change Report No.1083 of 1997, these 11 members were shown as members is liable to be rejected. A perusal of findings dated 30/03/2002 in Inquiry No.1083 of 1997 shows that while deciding the issue as to whether the reported change is legal and valid, there is no specific inquiry into the validity of membership of 11 Members, whereas in respect of four members claiming to be founder members, on basis of documents on record, it is held that there were seven founder members of the Trust.

40. The Jt. Charity Commissioner has rightly evaluated the evidence produced on record. The evidence of Election Officer Shri Ajit Patil, who has conducted the election in respect of which change report has been filed, had admitted in the cross examination

that the four members alleging to be founder members have not produced evidence about depositing membership fee/subscription till filing of application for registration.

41. For the purpose of considering the membership of the four members alleging to be founder members, the previous proceedings cannot be ignored. In Change Inquiry Report No 1083 of 1997, there are specific findings given by the Assistant Charity Commissioner after examining the records that the record maintained by the President is illegal. The Assistant Charity Commissioner has held that there were 7 founder members of the Trust who were the ordinary members. The findings of the Assistant Charity Commissioner have attained finality as the challenge upto this Court has been negated. The submission of the learned counsel for the Petitioners that the findings in Change Inquiry Report No 1083 of 1997 are findings of Election Officer and ought not to have been considered is liable to be rejected. In my opinion, the enquiry under Section 22 of the Trust Act cannot be said to be a formal inquiry and the findings given therein cannot be ignored. In the present case while examining the issue of membership of the four persons claiming to be founder members, the findings in the earlier Change Report carry weightage and is to be considered.

42. As regards the list of members produced at page no.60 of the petition alongwith the cash book register and receipts which is being relied upon to support the contention that there were 11 members of the trust as on 27.12.1990 out of which 6 were life members and 5 were ordinary members, the material was already the subject matter of examination before the Assistant Charity Commissioner in Inquiry No 1083 of 1997 and the findings in respect thereof has not been disturbed. In this context, reliance is placed on the evidence of Baburao Pawar who has deposed that at the time of the registration of the public trust there were 11 members, however, he has also deposed that the Petitioners in Writ Petition No 504 of 2023 claiming to be founder members are not members of the Trust.

43. In addition the above findings, in respect of the membership of Ramdas Pardeshi ,in the application for registration of Trust, his name was included which came to be deleted pursuant to the Judgment dated 05.05.1997 passed in Misc. Application No 126 of 1996. The contention of the learned counsel for Petitioner is that in the application for registration, his name was shown as part of the Trustees and Managing Committee members, whereas he was an ordinary member. From the perusal of the judgment dated

05.05.1997, no such case was put forward by Pandurang Pawar and there was objection to deletion of his name on the ground that after registration of the trust entries were taken in Schedule I and thereafter Baburao Pawar has scored out the name of Ramdas Pardesi and inserted name of Ramdas Raibhan Pawar, which contention was rejected and Misc. Civil Application No 126 of 1997 came to be allowed. Considering that no appeal was preferred against the judgment dated 05.05.1997, the deletion of his name has attained finality.

44. As regards the validity of the change report, the burden is upon the reporting trustee i.e. Pandurang Pawar, who has deposed below Exh.58 and has also examined witness Sitaram Dhondu Pawar below Exh.60 as well as the Election Officer below Exh.126. The witness - Sitaram Dhondu Pawar has deposed that at the time of registration of the trust there were 6 life members, who had paid the subscription of Rs.1001/- and there were 5 ordinary members who had paid Rs.101/- which was deposited in the bank and the record of the same has been noted in the records of the trust. They have further deposed that Baburao Pawar had prepared forged record and on the basis of the forged record, elections were held and the change report no.1083 of 1997 was filed and accepted, as a result of which

the reporting trustee - Pandurang Pawar had lodged an FIR under Section 420, 468 and 471 of the Indian Penal Code, on the basis of which criminal proceedings were initiated against Baburao Pawar whereby the Judicial Magistrate First Class had convicted the Baburao Pawar under Section 471 of the IPC. They have further deposed that the election programme was declared on 05.08.2014 which was published and as objections were raised, the Election Officer by order dated 21.08.2014 declared the voters list of 11 members as against which writ petitions were filed before this Hon'ble Court and this Hon'be Court had directed that as regards the disputed membership, the votes will be kept separately in a separate ballet box. Pursuant to the elections which were held, 7 members i.e. Pandurang Pawar, Sumanbai Pandurang Pawar, Ramdas Gabu Pardeshi, Yashwant Pandurang Pawar, Sitaram Dhondu Pawar, Jaywant Pandurang Pawar and Namdeo Raibhan Pawar came to be elected on the Managing Committee.

45. The Election Officer has deposed as to the conduct of the elections which is in consonance with the deposition of Pandurang Pawar and Sitaram Dhondu Pardeshi. In the present case, what is required to be ascertained is the validity of the elections and in particular taking into consideration whether the members who had

voted, were valid members. Objections have been raised to the membership of Ramdas Gabbu Pardeshi and other four members who claimed to be the founder members of the trust. As regards Ramdas Gabbu Pardeshi initially at the time of the registration of the trust the name of Ramdas Gabbu Pardeshi was noted as the trustee of the trust and on the objection which was raised by Baburao Pawar by rectification application No.126 of 1996, the name of Ramdas Gabbu Pardeshi came to be deleted from the application for registration as trustees. There are rival submissions which have been raised in respect of the membership of Ramdas G. Pardeshi inasmuch as the learned counsel for the petitioners claimed that name of Ramdas G. Pardeshi was deleted as he had not consented to be the trustee and in fact he was the member of the trust which is evident from the documents which have been produced in the enquiry proceedings i.e. the register of members of the trust, cash book, copies of receipt of membership payment and subsequent payment for the membership upto the year 1995 and the copy of the inspection report dated 05.12.1995.

46. A perusal of the Misc. Application No.126 of 1996 which was filed by Baburao Pawar shows that the Assistant Charity Commissioner by its judgment delivered on 05.05.1997 and after

considering the objections of the parties, allowed the application and permitted the scoring out of the name of Ramdas Gabbu Pardeshi.

47. In this context a useful reference can be made to the report of Election Officer dated 03.07.1997, which is annexed at page 251 to Writ Petition No.8764 of 2022. The Election Officer while submitting a report to the Assistant Charity Commissioner in respect of the elections of the trust has reported that after perusal of the documents made available to him, the valid members of the Sanstha were shown as 18 in number. In this list, there are initial 7 members, who were the signatories to the application for registration and 11 members who claimed to have been inducted in the meeting dated 28.03.1994. In this report, the name of Ramdas Gabbu Pardeshi and other four alleged founder members have not been included. The report of the Election Officer as regards the valid members of the trust was submitted after perusing the Schedule-VI which records the list of members as mandated by Section 15 of the Societies Registration Act. In that list at Schedule-VI, only the 7 members / trustees who had signed the application for registration are shown as the list of members. After this, election was held in the year 1997 in which this report came to be submitted. The change report was submitted which came to be challenged before the Assistant Charity

Commissioner by Pandurang Pawar claiming that the false voters list and false election proceedings are prepared by the Election Officer.

48. The next issue which is required to be considered as to whether the Jt. Charity Commissioner was right in directing the matter to be remanded to the Dy. Charity Commissioner for fresh hearing. As I have already observed that there is no infirmity in the finding of the Jt. Charity Commissioner as regards the membership of the Petitioners in Writ Petition No 504 of 1983 claiming to be founder members of the Trust, in my opinion, the impugned Judgment and order 30.05.2022 does not warrant interference.

49. In light of the above, the Petitions stand dismissed. Rule discharged.

(SHARMILA U. DESHMUKH, J.)

GGP