



IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD

WRIT PETITION NO. 11919 OF 2023

1. Sambappa S/o. Trimbakappa Girwalkar,
Age 91 years, Occu. Agriculture,
R/o. "Shivchhaya", Beside Panchayat
Samiti, Latur, Tq. & Dist. Latur.
2. Madhavrao Hanmantrao Patil (Taklikar),
Age 61 years, Occu. Agriculture,
R/o. Behind Kalikadevi Temple,
Old Ausa Road, Latur, Tq. & Dist. Latur.

....Petitioners

Versus

1. The Joint Charity Commissioner,
Pune Region, Pune.
2. The Deputy Charity Commissioner,
Latur Region, Latur.
3. Manmathappa S/o. Pandbappa Lokhande,
Age 90 years, Occu. Business,
R/o. Subhash Chowk, Latur,
Tq. & Dist. Latur.
4. Shivshankar S/o. Vajinathappa Khanapure,
Age Major, Occu. Pensioner,
R/o. Adarsha Colony, Latur,
Tq. & Dist. Latur.
5. Ashok S/o. Sharnappa Upase,
Age Major, Occu. Agriculture,
R/o. Pochamma Galli, Latur,
Tq. & Dist. Latur.
6. Vijay S/o. Nagnathappa Revadkar,
Age 58 years, Occu. Business,
R/o. Majgenagar, Kawa Road,
Latur, Tq. & Dist. Latur.
7. Shivshankar Mallikarjunappa Bidve,
Age 70 years, Occu. Business,
R/o. Lokhand Galli, Latur.

....Respondents

...
Mr. Rajendra S. Deshmukh a/w. Mr. Jay Veer i/b. Mr. N.P. Patil-Jamalpurkar,
Advocate for petitioners.

Mrs. P.R. Bharaswadkar, AGP for respondent/State.

Mr. R.N. Dhorde, Senior Advocate i/b. Mr. P.S. Dighe, Advocate for respondent Nos. 3 and 5.

Mr. T.G. Gaikwad, Advocate for respondent No. 7.

**WITH
WRIT PETITION NO. 11880 OF 2023**

Madhavrao Hanmantrao Patil (Taklikar),
Age 61 years, Occu. Agriculture,
R/o. Behind Kalikadevi Temple,
Old Ausa Road, Latur, Tq. & Dist. Latur.

....Petitioners

Versus

1. The Joint Charity Commissioner,
Pune Region, Pune.
2. The Deputy Charity Commissioner,
Latur Region, Latur.
3. Manmathappa S/o. Pandbappa Lokhande,
Age 90 years, Occu. Business,
R/o. Subhash Chowk, Latur,
Tq. & Dist. Latur.
4. Mahesh S/o. Virbhadrappa Halge,
Age 55 years, Occu. Business,
R/o. Sadbhavna Nagar, Latur,
Tq. & Dist. Latur.
5. Shivshankar S/o. Vajinathappa Khanapure,
Age Major, Occu. Pensioner,
R/o. Adarsha Colony, Latur,
Tq. & Dist. Latur.
6. Ashok S/o. Sharnappa Upase,
Age Major, Occu. Agriculture,
R/o. Pochamma Galli, Latur,
Tq. & Dist. Latur.
7. Shivshankar Mallikarjunappa Bidve,
Age 70 years, Occu. Business,
R/o. Lokhand Galli, Latur.

....Respondents

...

Mr. N.P. Patil-Jamalpurkar, Advocate for petitioner.

Mrs. P.R. Bharaswadkar, AGP for respondent/State.

Mr. R.N. Dhorde, Senior Advocate i/b. Mr. P.S. Dighe, Advocate for respondent No. 5.

Mr. T.G. Gaikwad, Advocate for respondent Nos. 3 & 7.

CORAM

: ARUN R. PEDNEKER, J.

DATED

: 28th February, 2024.

JUDGMENT :

1) In the Writ Petition No. 11919/2023, the petitioners are challenging the impugned judgment and order dated 31.7.2023 passed by the Joint Charity Commissioner, (hereinafter referred to as "Jt.C.C." for short) Pune Region, Pune in Appeal No. 35/2022 and the order dated 9.9.2022 passed by the Deputy Charity Commissioner, (hereinafter referred to as "Dy.C.C." for short) Latur Region, Latur in Change Report (hereinafter referred to as "C.R." for short) No. 1420/2019, thereby accepting the C.R.No. 1420/2019 filed by the respondent No. 3.

2) In Writ Petition No. 11880/2023, the petitioner is challenging the impugned judgment and order dated 1.8.2023 passed by the Jt.C.C., Pune Region, Pune in Appeal No. 36/2022 and the order dated 9.9.2022 passed by the Dy.C.C., Latur Region, Latur in C.R.No. 596/2021, thereby rejecting the C.R.No. 596/2021 filed by the petitioner.

3) Both the writ petitions are interconnected with each other and arise out of the elections of the same trust, as such, both these writ petitions are taken up for hearing together. The Hon'ble Supreme Court by order dated 7.6.2022 in Petitions(s) for Special Leave to Appeal (c) Diary No. 15900/2022 had directed the authorities concerned to decide the above C.Rs. together and the Dy. C.C., so also the appellate authority i.e. Jt.C.C.

have decided aforesaid C.Rs. together and thus, the writ petitions are taken up for hearing together.

4) Facts, giving rise to the Writ Petition Nos. 11919/2023 and 11880 of 2023 can be summarized as under :-

Writ Petitions concern with the election of "Mahatma Basweshwar Education Society, Latur", a public trust, registered in accordance with the provisions contained in the Maharashtra Public Trust Act, 1950 as well as the Societies Registration Act, 1860, having registration No. F-52/Latur. The said public trust is one of the oldest Educational Trust in Marathwada Region, which runs schools and colleges at different places in Marathwada Region of Maharashtra.

5) The litigation has a long history. The trust was established in the year 1965. The deceased father of respondent No. 7 – Mallikarjunappa Bidve and the petitioner No. 1 (Sambappa Girwalkar) are the founder trustee. The petitioner No. 1 and his group were in control of the said trust till 2013. In the year 2018, complaints were made relating to the management of the trust to the Dy.C.C., Latur and therefore, administrator was appointed and directions were given to Assistant Charity Commissioner (hereinafter referred to as 'A.C.C.' for short) to conduct the election of the trust. After conducting elections in the year 2018 C.R. No. 5548/2018 was filed before the A.C.C., Latur and was provisionally accepted on 18.8.2018.

6) Writ Petition No. 8593/2018 was filed by the present petitioner No. 1 and his group, challenging the said elections held in the year 2018 by alleging fraud. It was alleged that as per the Constitution of the trust, only

founder members are eligible to contest the elections of the President and the petitioner No. 1 – Mr. Girwalkar was the only founder member, who was alive and the respondent No. 7 could not have been elected as a President.

A) In Writ Petition No. 8593/2018, this Hon'ble Court vide order dated 22.2.2019 observed that only one founder member is alive and no patron members, who are eligible to contest elections are alive. Thus, the High Court directed that an ordinary member being inducted prior of 1994 would be entitled to apply for patron membership and would be eligible to contest the election if a member pays Rs.30,000/- to the trust within a particular time and the member should be treated as patron member. However, this fact i.e. whether the ordinary member on payment of Rs.30,000/- and being enrolled as patron member becomes instantly eligible to contest the election is disputed by the petitioners. I will discuss this in detail in the course of the judgment. But suffice to mention that 30 members paid Rs.30,000/- and became patron members. This Court by order dated 22.2.2019 also directed the Jt.C.C. to hold elections of the trust. The above mentioned order of this Court dated 22.2.2019 was challenged before the Hon'ble Supreme Court in Petition(s) for Special Leave to Appeal (C) No (s) 8089-8090/2019 by the petitioners and the same was dismissed by the Hon'ble Supreme Court vide order dated 29.3.2019.

7) In view of the order passed in Writ Petition No. 8593/2018 the Jt. C.C. was appointed as Administrator and he took charge. On 15.3.2019, the Jt. C.C. appointed Dy. C.C. as an election officer. On 1.4.2019, voters list has published. Objections were raised against the list of voters list. The

same was decided by the Dy.C.C. The said decision of Dy.C.C. was challenged by filing Writ Petition No. 5311/2019 before this Court and Writ Petition No. 5311/2019 was also dismissed. On 2.4.2019, the voters list of 44 members became final. On 16.4.2019, the election officer published the election programme commencing from 23.4.2019 to 5.5.2019. On 5.5.2019 nominations were filed for 8 posts to be elected. In the election, the petitioners' group received 15 votes whereas the group of respondent No. 7 received 28 votes. On 7.5.2019 the Administrator i.e. Jt. C.C. handed over charge to the elected Managing Committee. As per the constitution of trust, on 13.5.2019 the seven governing council members were nominated.

8) On 20.5.2019, C.R. No. 1420/2019 was filed by the respondent No. 3 – Manmatappa Lokhande, who was elected as Secretary of the Trust to which the present petitioners raised the objection. On 23.10.2019 the Transfer Application No. 145/2019 was filed by the petitioners before Jt.C.C., making allegations against the then Dy.C.C. and the said C.R. No. 1420/2019 was transferred to another District i.e. to Dy.C.C., Beed. On 25.6.2021, the Dy.C.C., Beed rejected the said C.R. No. 1420/2019. Against the order of Dy.C.C., Beed, rejecting the C.R. No. 1420/2019, Appeal No. 10/2021 was filed by respondent No. 3 along with the application for stay on the same day before Jt.C.C., Latur. On 16.7.2021, in the appeal, status-quo order was passed by the Jt.C.C. On 17.8.2021 the Jt.C.C. suspended the order of rejecting C.R. No. 1420/2019.

9) Thereafter, on 29.10.2021, Transfer Application No. 31/2021 was filed by the petitioner before the Charity Commissioner (hereinafter referred to

as 'C.C.' for short) Mumbai by the petitioners for transferring the said Appeal No. 10/2021 from Jt.C.C. Latur. In the meantime, the said order of suspension of C.R. No. 1420/2019 was challenged by filing Writ Petition No. 9624/2021 by the petitioners and the same was also dismissed.

10) On 14.1.2022 the C.C. Mumbai allowed the Transfer Application No. 31/2021 and Appeal No. 10/2021 was transferred to Jt.C.C. Mumbai. On 21.2.2022 the Jt.C.C., Mumbai allowed the Appeal No. 10/2021 and remanded the matter to the Dy.C.C., Latur for hearing from the stage of arguments. However, by order 28.4.2022 in Writ Petition No. 3557/2022, this Court by keeping the remand order of Jt.C.C., Mumbai intact directed Dy.C.C. that after the remand, the matter should be heard fully and not from the stage of arguments.

11) In the interregnum, when the Dy.C.C., Beed rejected C.R. No. 1420/2019 on 25.6.2021. The present petitioners on 26.6.2021 issued notice for General Body Meeting, which was held on 4.7.2021. In the said General Body Meeting, it is alleged that elections took place and trustees are elected and C.R. No. 596/2021 was filed by the petitioner No. 2 - Madhavrao Patil as reporting trustee showing new managing committee being elected.

12) On 29.9.2021, Madhavrao Patil filed application under section 22(A) for acceptance of provisional C.R. No.596/2021. The Dy.C.C. did not pass any order on the application for acceptance of provisional C.R. No. 596/2021 filed by Madhavrao Patil, apperantly, on account of order passed by the Jt.C.C. on 17.8.2021 in C.R. No.1420 of 2019.

13) On 11.11.2021, the present petitioner No. 2 – Madhavrao Patil filed an application before the Dy.C.C., Latur to decide his application for acceptance of provisional C.R. No. 596/2021. Thereafter, Madhavrao Patil filed Writ Petition No. 2421/2022 seeking direction to Dy.C.C. Latur to decide his provisional C.R. On 14.3.2022, this Court disposed of the Writ Petition No. 2421/2022, directing the Dy.C.C., Latur to accept the provisional C.R. No. 596/2021. In this matter, only State authorities were made parties and the respondent No. 7 was not made party. As such, on 23.3.2022, respondent No. 7 filed Review Application No. 96/2022 in Writ Petition No. 2421/2021. The same was dismissed by this Court by order dated 25.3.2022, directing that C.R. No. 596/2021 be decided on merits.

14) On 29.3.2022, the Dy.C.C. observed that there are conflicting orders namely Jt.C.C. suspended order of rejecting C.R. No. 1420/2019 and the order passed by the High Court accepting C.R. No. 596/2021 and thus did not accept provisional C.R. No. 596/2021. On 4.4.2022 Contempt Petition No. 203/2022 was filed against the Dy.C.C., Latur by the present petitioner No. 2 – Madhavrao Patil, alleging that despite directions, the provisional change report is rejected. On 6.4.2022, this Court issued notice in the Contempt Petition to the Dy.C.C. Contempt Petition No. 203/2022 was heard and the apology made by the Dy.C.C was accepted. The Dy.C.C. requested permission of this Court to withdraw the order dated 29.3.2022 and pass fresh order on provisional acceptance of C.R. No. 596/2021. Present respondent No. 7 had also filed an application for intervention in the said Contempt Petition No. 203/2022.

15) On 9.5.2022, the Dy.C.C. provisionally accepted the change report. The said order dated 9.5.2022 of the Dy.C.C. was challenged and in Writ Petition No. 2421/2022 finally before the Supreme Court in SLP (Diary) No.15900/2022 by Respondent No.7. The Hon'ble Supreme Court directed the Dy. C.C. to hear both C.R. Nos. 1420/2019 and 596/2021, after hearing all the parties at earliest preferably within three months.

16) After the order passed by the Hon'ble Apex Court, directing to hear both C.Rs. simultaneously, Transfer Application No. 44/2022 was filed by petitioner No. 1 before the Charity Commissioner, seeking transfer of the change reports from Dy.C.C. Latur to another Dy.C.C. On 7.7.2022 the C.C. Mumbai rejected the transfer application.

17) Against the order of the Charity Commissioner, the petitioner No. 2 Madhavrao Patil filed Writ Petition No. 7138/2022 and this Court by order dated 12.7.2022 rejected the Writ Petition No. 7138/2022. Thereafter, the petitioner No. 2 filed SLP (Diary) No. 12756/2022 and the same was disposed of by the Supreme Court by order dated 29.7.2022.

18) On 9.9.2022 the Dy.C.C. allowed C.R. No. 1420/2019 and rejected C.R. No. 596/2021 by separate judgments.

19) On 27.2.2022, Appeal No. 35/2022 is filed by the present petitioners against the acceptance of C.R. No. 1420/2019 and Appeal No. 36/2022 by petitioners is filed against the order rejecting C.R. No. 596/2021. There was no interim order passed by the Appellate Court and the appellate Court, by the impugned order dismissed both the appeals which are impugned in the

present writ petitions. The Writ Petition No. 11919/2023 is in respect of C.R. No. 1420/2019 and Writ Petition No. 11880/2023 is in respect of C.R. No. 596/2021.

Contentions of the petitioners in Writ Petition No. 11919/2023

20) The contentions of the petitioners in Writ Petition No. 11919/2023 are as under :-

(i) C.R. No. 1420/2019 deserves to be rejected, as the elections to the Governing Council of Public Trust held on 5.5.2019 is illegal for the reason that the elections of the Members of Governing Council were held in contravention of the Constitution of the Public Trust.

(ii) The election of the respondent No. 7 as President is illegal, because he is not qualified and eligible to contest the election, in view of his involvement in committing fraud and forgery. He had shown himself as eligible and qualified member by manipulating/forging the copy of the Constitution of the Public Trust and therefore, a Criminal Case is also filed by the Trustees against the respondent No. 7.

(iii) In the election of President and Vice President, all members have casted their votes, but as per the Constitution of the Public Trust only Patron members are entitled to vote. Therefore, the election of the respondent

No. 7 as President is illegal.

(iv) The second objection is that 06 (six) members of Governing Council are to be elected by the General Body. But in the elections in question, the Returning Officer have taken votes of only members of the Public Trust. Infact, these 06 (six) members are required to be elected by the General Body. Head of Institutions are members of the General Body and they were not called by giving notice for electing 06 (six) members of the Governing Council. Hence, the elections of Governing Councils are illegal.

(v) As the election of the respondent No. 7 as President itself is illegal and therefore, nominations made by him in respect of 04 (four) members of Governing Council and also Secretary and Treasurer are vitiated.

(vi) C.R. No. 1420/2019 in respect of elections of Governing Council held on 05.05.2019 was submitted before the Dy.C.C. Latur on 20.05.2019 by the respondent No. 3 along with separate Application U/sec. 22 (2) of M.P.T. Act for accepting the said C.R. provisionally. The Dy.C.C. Latur vide order dated 4.1.2021 refused to accept the said C.R.No. 1420/2019 provisionally. The order dated 4.1.2021 passed by Dy.C.C. Latur was challenged by the respondent No. 3 by filing W.P. No. 1173/2021 in this Hon'ble Court. On

24.2.2021 this Court dismissed W.P. No. 1183/2021 and confirmed the order of Dy.C.C. Latur refusing to accept C.R. No. 1420/2019 provisionally.

(vii) Thereafter, C.R. No. 1420/2019 was rejected finally on merits after holding a detail inquiry by Dy.C.C. vide judgment and order dated 25.6.2021. The Dy.C.C. Latur rejected the said C.R. No. 1420/2019 on merits by recording a finding that whole elections to the members of Governing Council including of President and Vice President were held in contravention of Constitution of the Public Trust. The Dy.C.C. also recorded a finding that 06 (six) members of Governing Council were not elected by the General Body, which includes Head of Institutions.

(viii) The said order of rejection of C.R.No. 1420/2019 was challenged by the respondent No. 3 by filing Appeal No. 10/2021 before the Jt. C.C. The respondent No. 3 and other could not succeed in Appeal No. 10.2021, as the Appellate Authority has inclined to accept the said C.R., but only remanded the matter for fresh inquiry. The remand was made only for ascertaining as to whether participation of Head of Institutions is really mandatory as per the constitution of the Public Trust or not.

(ix) As several authorities in various proceedings did not

accept C.R. No. 1420/2019, but the Dy.C.C. by acting in collusion with the respondent Nos. 3 and 7 and under their influence for the first time accepted the C.R. No. 1420/2019 under order dated 9.5.2022. The said order of Dy.C.C. was challenged by the petitioners by filing Appeal No. 35/2022 before Jt.C.C. On 31.7.2023 the Jt. C.C. without going to the legal objections as mentioned in above paragraphs dismissed Appeal No. 35/2022 and confirmed the order of Dy.C.C. accepting C.R. No. 1420/2019.

(x) The respondent No. 7 and his father by name Mallikarjunappa Bidve have misappropriated Crores of rupees of the Public Trust. His father by name Mallikarjunappa Bidve was removed permanently by Charity Commissioner in proceedings under section 41-D for charges of misappropriation.

(xi) The order of removal and dismissal of Mallikarjunappa Bidve (father of respondent No. 7) was challenged before this Hon'ble High Court. This Hon'ble High Court vide judgment and in the case reported in 2008 (1) Mh.L.J. 148 held that Mallikarjunappa Bidve (father of respondent No. 7) collected Crores of rupees by accepting donations from students and also illegally collected and misappropriated Trust's funds and also not paid salary of employees of Bidve Engineering College and utilized the said amount for his own

personal benefits and therefore, all these activities are in the nature of misfeasance, which includes breach of Trust, which would result into loss of Trust and would cause unlawful gain to such trustee. This Hon'ble High Court confirmed the removal/dismissal of Mallikarjunappa Bidve.

(xii) The son of Mallikarjunappa Bidve i.e. present respondent No. 7 has continued with same activities. The respondent No. 7 not only misappropriated crores of rupees, but he is also involved in act of forgery of Trust's Constitution for showing himself eligible and qualified to become President. He has forged document of Constitution of the Public Trust by manipulating it and also got certified this document of Constitution of Trust by applying pressure and influence on person, who used to certify the document in the office of the Charity Commissioner. Therefore, this serious question arose for consideration as to whether man like the respondent No. 7 can be allowed to be continued in the Trust in capacity of President. Therefore, the order dated 31.7.2023 passed by the Jt.C.C. Pune in Appeal No. 35/2022 and the order dated 9.5.2022 passed by the Dy.C.C. Latur accepting C.R.No. 1420/2019 have been challenged in Writ Petition No. 11919/2019 for quashing the same.

Contentions of the respondents in Writ Petition No. 11919/2023

21) The contentions of the learned counsel for respondents in Writ

Petition No. 11919/2023 are as under :-

(i) **Suppression of material facts and abuse of process of Court :-**

The petitioners were required to disclose true and correct factual details in the pleadings of the present Writ Petition along with documents to that respect. The petitioners conveniently did not disclose the orders dated 16.7.2021 and 17.8.2021 passed by the Ld. Jt.C.C. in Appeal No. 10/2021 by which initially the status quo order was passed and prepared record and had illegally filed application Exh. 13 for provisional acceptance of their C.R. No. 596/2021 on 29.9.2021. In the said application petitioners suppressed the fact of the above referred orders passed by the Ld. Jt.C.C. in Appeal No. 10/2021 suspending the order of rejection of C.R. No. 1420/2019 there cannot be two management and therefore, their application for provisional acceptance was not maintainable when the appeal period is not over. The petitioner No. 2 filed Writ Petition No. 2421/2021 for directions to decide application Exh. 13 for provisional acceptance and in the said W.P. also the said facts were not disclosed and factual details were suppressed in W.P. before this Hon'ble Court. The order in W.P. No. 2421/2021 was obtained by fraud, not disclosing all facts before this Hon'ble Court. These respondents are not parties to said W.P.

(i-a) Considering the pleadings of the present W.P. also the present petitioners have not approached before this Hon'ble Court with clean hands and have suppressed various important facts from this Hon'ble Court. The petitioners have made allegations against the Ld. Dy.C.C. in the pleadings of the petition on the basis of the order passed by in Contempt Petition No. 203/2022. The petitioners did not mention the further details i.e. filing of Transfer Application No. 44/2022 seeking transfer of C.R. from Dy.C.C., Latur to another Dy.C.C. The said Transfer Application No. 44/2022 came to be rejected by C.C., Mumbai making observations about the conduct of the petitioner No. 2 Madhavrao Patil. The petitioner No. 2 herein filed WP No. 7138/2022 against the refusal of transfer of C.R. and the said WP also came to be dismissed on 12.7.2022. The petitioner No. 2 filed S.L.P. (Diary) No. 1275/2022 and the Hon'ble Supreme Court has recorded the statement of the petitioner that he has full faith in the Ld. Dy.C.C. and is ready to conduct the matter. All these facts are conveniently and deliberately suppressed by the present petitioners in the present W.P. The said conduct on the part of the petitioners will clearly amounts to concealment of material facts and misleading this Hon'ble Court. The said act on the part of the petitioners also amount to contempt of court for abusing the process of court by not approaching this Hon'ble Court with clean hands and by disclosing all facts before this Hon'ble Court. Therefore,

the petitioners are not entitled for any equitable relief and therefore without going into the merits of the case, the present WP is liable to be dismissed at the threshold for not disclosing all facts before this Hon'ble Court.

(ii) **B. Concurrent findings of facts recorded by two authorities below may not be interfered with under Article 227 of the Constitution of India.**

Both the authorities below have considered the objections raised by the present petitioners to the C.R.No. 1420/2019 and have specifically recorded findings on each ground raised by the petitioners.

(iii) Ground that non participation of Head of Institution vitiates election :-

The Ld. Dy.C.C. has recorded the findings. The Ld.Jt.C.C. Appellate Authority has also recorded findings in Appeal No. 35/2022. The petitioners are trying to refer to appointment of one Shri. Kadge then head of institution as Joint Secretary in the year 1988. Considering the record, it would clearly show that, the said Shri. Kadge was nominated as Ex-officio member and subsequently he had resigned from the said post as will be evident from the order dated 27.2.1988 passed in C.R. No. 66/1988. The record shows that, he has never contested elections and was only Ex-officio member therefore, the petitioners cannot rely upon

the same. The Head of Institution are not members of the Trust and cannot vote, therefore, they are not included in the voters list.

(iv) **C. Elections not materially affected by not including names of head of institution :-**

The petitioners are trying to contend that, due to non-participation of Head of Institution in the election the same are vitiated. The Ld. Jt.C.C. has specifically recorded finding that the present petitioners are defeated by receiving 13 votes as against 28 votes by the group of this respondent. Even if the Head of Institution were allowed to vote the result of the election would not be materially affected or will not change at all as elected committee has won by margin of 13 votes.

(v) **D. Judgment obtained by fraud is to be treated as nullity :-**

The present petitioners are time and again referring the judgment of this Hon'ble Court in WP No. 2421/2022 in order to make allegations against the Ld. Dy.C.C. As referred above, the present petitioners did not disclose all facts in the application for provisional acceptance of C.R. as well as in the said W.P. before this Hon'ble Court and obtained the said order by fraud on court. Therefore, the judgment in WP No. 2421/2022 has to be treated as nonest in view of the

judgment of Hon'ble Supreme Court reported in AIR 2007 SCC 154.

(vi) **Conduct of the petitioners :-**

(a) The elections were held as per the directions of this Hon'ble Court in WP No. 8593/2018 by judgment dated 22.2.2019. The said judgment is confirmed by the Hon'ble Supreme Court on 29.3.2019.

(b) The elections were held by appointing administrator i.e. Lt.Jt.C.C. and the elections officer was Ld. Dy.C.C. Despite, this the petitioners are disputing the elections on one or other ground and are filing various proceedings which is abuse of process of Court.

(c) The petitioners filed first Transfer Application No. 145/2019 for transfer of C.R. No. 1420/2019 by making allegations against the authority and same was transferred from Latur to Beed. In Appeal No. 10.2021 the interim order was passed on 17.8.2021 suspending the rejection of C.R. No. 1420/2019 and immediately thereafter, the present petitioners filed Transfer Application No. 31/2021 making allegations against appellate authority also for transferring the said Appeal No. 10/2021 from Jt.C.C. Latur to Jt. C.C., Mumbai. The said Transfer Application No. 31/2021 was allowed and the Appeal No. 10/2021 was transferred to Jt.C.C., Mumbai.

(d) The Hon'ble Supreme Court by order dated 7.6.2022

specifically directed to hear both the C.R. No. 1420/2019 and 596/2021 within three months and parties were directed to cooperate to the Dy.C.C. Despite, this the petitioners again filed Transfer Application No. 44/2022 making allegations against Dy.C.C. for transfer of C.R. from Dy.C.C. Latur to other Dy.C.C. The said Transfer Application No. 44/2022 rejected by C.C.,Mumbai and the said order is confirmed by the Hon'ble Supreme Court.

(e) In view of the above, it would clearly show the dishonest conduct on the part of the present petitioners making allegations against the authorities who are deciding against them. In the present petition also despite there is undertaking recorded of the present petitioners by the Hon'ble Supreme Court for conducting the matter before Ld. Dy.C.C. against whom now allegations are being made, are referring to the earlier record which as been refused to be considered in last Transfer Application. All this would show dishonest intention of the petitioners in approaching this Hon'ble Court. Therefore, considering the said dishonest conduct on the part of petitioners they are not entitled for any relief in the present W.P.

POINTS FOR DETERMINATION

22) From the above submissions of the learned counsel for the parties, following points arise for determination in Writ Petition No. 11919/2023 :-

I) Whether elections held on 5.5.2019 in respect of C.R. No.

1420/2019 are vitiated on account of non following the provisions of Constitution of the Trust ?

II) Whether the authorities who decided C.R. No. 1420/2019 and C.R. No. 596/2021 were biased in deciding the above C.Rs. and whether the decisions taken by the authorities are unlawful on account of bias towards the petitioners ? (This issue being common to both the C.Rs. Is considered at the end of this judgment)

CONSIDERATION IN WRIT PETITION NO. 11919/2023

23) Challenge in C.R. No. 1420/2019 is primarily to the elections being not in accordance with the Constitution of the Trust. The relevant provisions of the Amended Constitution of Mahatma Basweshwar Education Society, Latur Trust, necessary to decide the writ petition are quoted below as under :-

"GENERAL BODY :-

- (a) The General Body of the Society shall consist of all the members mentioned above except the honorary members. Head of all the institutions of the Society will be the members of the General body. The meeting of the General body will be conveyed once a year within six months of the close of financial year.
- (b)
- (c) A special meeting of the General Body will be conveyed if felt necessary by the Governing

Council or on written requisition to the president by 30 or more members who have right to vote by giving a week notice. But in such special meetings no other item (s) than the one for which the meeting is called will be discussed.

- (f) The member enrolled as per the previous constitution will have no right to be a member unless he fulfilled the requirement as per the new constitution and those members who have fulfilled requirements as per the new constitution before December 1970 will be member of the Society.

The existing President and Vice-President will be permanent President and Vice-President respectively till their life time. After them the President and Vice-President is to be elected by General Body from amongst founder member or from patron member. If no member is available from founder member then from well-wisher, if no member is available from patron member. President and Vice-President shall have a right to nominate the Secretary and Treasurer and Secretary in consultation with President and Vice-President shall nominate Joint Secretary if necessary.

- (g) The President and Vice-President shall have a right to nominate four Governing Council members (in

addition to Secretary and Treasurer).

- (1) To prepare educational plans in accordance with the objects of the Society and to have General supervision over them.
- (2) To consider the approved annual report prepared by the Governing Council.
- (3) To elect the 6 members only of the Governing Council of Society.

GOVERNING COUNCIL :-

- (1) The Governing Council of the Society shall consist of 15 members and only those members of the Society who have a standing of 5 years will be eligible for membership of the Governing.
- (2) The Governing Council shall be elected at the end of every 5 years. The same members being eligible for reelection.
- (3) The Head of the each institution(s) run by the society shall be ex-officio member of the Governing Council.
- (4) The Governing Council has the right to elect other office bearers (other the President, Vice-President, Secretary, Joint-Secretary and Treasurer, if felt necessary. Hence the President may appoint a Executive Director from amongst elected members of the Governing Council for period of five years

after election of the former.

(5)

(10) The President or Secretary has got a right to call a special meeting of the Governing Councils on his own initiative or on the requisition signed by five or more members of the Governing Council.

(11) The six members of the Governing Council from the General Body (excluding subscriber and Honorary member) will be elected by General Body. If a candidate remains absent in a meeting, his written consent to contest the election is essential."

24) Formation and constitution of Governing Council as per the approved Constitution of the Public Trust is as follows-

- (A) Total members of Governing Council are 15;
- (B) President and Vice President are to be elected from the founder member and the Patron Members of the trust (except honorary member), the President and Vice President shall have right to nominate Secretary and Treasurer and the Secretary in consultation with President and Vice-President shall nominate Joint Secretary. The President and Vice-Presidence shall have right to nominate 04 Governing Council Members (*in addition to Secretary & Treasurer*).
- (C) The General Body of the Public Trust shall consist of members of the Trust except "honorary members". Head of

all institutions of the Public Trust will be members of the General Body.

(D) 06 (six) members of Governing Council from General Body (excluding subscribers & honorary members) will be elected by General Body.

(E) "Powers and function of General Body", the General Body have right to elect 06 (six) members of Governing Council of the Public Trust.

As per the above provisions of Constitution of the Public Trust, the Governing Council has to be constituted by way of elections and nominations.

25) The Constitution of the Trust provides that the General Body of the Trust should consist of members of the trust except 'honorary members'. It also includes the head of the institution. The General body elects the Governing council from the patron members and founder members. In terms of the order dated 22.2.2019 in Writ Petition No. 8593/2018 (Sambappa Trimbakappa Girwalkar Vs. Deputy Charity Commissioner and Ors.) with other connected matters, this Court permitted the general members to become patron members by depositing fee of Rs. 30,000/- towards patron membership and permitted such members to contest the elections to the post of President etc. as only one single founder member was alive as on that date and no patron member was alive. The relevant portion at para 10 and 33 of the order dated 22.2.2019 in Writ Petition No. 8593/2018 is as under :-

"10. There is no dispute that considering the passage of time of about 54 years of the formation of the Mahatma

Basweshwar Education Society Trust, not a single patron member is alive. Out of the founder members, only 1 person namely Sambappa Trimbakappa Girwalkar is alive. There is no dispute considering the 1965 memorandum, the amendment to the Constitution of 1973 and the subsequent amendment in 1994, that there is no change in the position that only a founder member or a patron member would be eligible for contesting the post of President of the Trust. It is also undisputed that owing to the amendment of 1973, there was a ban on enrollment of new members.

11.

33. Since I find that not a single patron member is alive today and only one founder member is available, it would be a mockery of democracy to permit an election of the Trust since the said founder member would stand elected without any contest. Moreover, there is no embargo on the number of patron members. An ordinary member can become a patron member by depositing Rs.30,000/- as his patron membership fees and he would be eligible to contest the elections to the post of President etc. since none of the members can aspire to be founder members in view of the definition, and since only one founder member is alive, ends of justice would met and the interest of the Trust would be secured if the general members are permitted to become patron members in view of there being no prohibition in law."

This order dated 22.2.2019 has attained finality after the S.L.P. against the order was dismissed and thus, the patron members admitted within the time frame given by this Court, by depositing Rs.30,000/- would be eligible to contest the elections of Governing Council.

26) The submission of the counsel for the petitioners is that all the members of the General Body were not called for the elections to the Governing Council i.e. the heads of the institutions were not issued notices, who are the part of the General Body and they did not participate in the

election process. With regard to the above submissions canvassed by the learned counsel for the petitioner, the relevant facts that are required to be noted are that the elections to the trust were held in view of the directions of this Court by the authority appointed by this Court. The authority appointed by this Court has appointed election officer. The election officer published the voters list and objections were invited to the voters list as is seen from the impugned order and there is no dispute about this fact. None raised objections to the voters list with regard to the heads of the institution being not shown in the voters list. There is no objection by any one of the head of the institution also. It is also not known as to how many institutions had functional heads at the relevant time. No data in this regard is available even before this Court. I do not see that the heads of the institution of the trust are challenging the elections of the Governing Council of the trust. There is also no clear evidence that at any point of time in the earlier elections all the heads of the institutes participated for voting in the General Body. No voters list is produced of the earlier elections to demonstrate that the heads of institute participated in any earlier elections as voters. The solitary instance of one Head of the Institute being elected as a member of Governing Council, is insufficient to hold that the Heads of Institution were part of the Governing Body before the election under challenge. It is contended by the respondent that the elected head of the Institution was the ex-officio member of the Trust. In absence of any data as regards the heads of the institution to constitute the General Body, it cannot be said that elections would be materially affected, if the head of the institution were given opportunity to participate in election process. From the group of respondents elected members got 28 votes whereas from the group of

petitioners members got 15 votes and the newly committee was elected by the margin of 13 votes. In the Writ Petition, the Petitioners have submitted list of 14 institutes being run by the Trust. However, there is no data as regards the functional heads of the institutes. Thus, in absence of material data, it cannot be said that the elections could have been materially altered in the event the heads of the institution had participated in the election.

27) As regards members qualification to be eligible to contest for Governing Council is concerned i.e. should be a member for 5 years is concerned, it is undisputed that all the members were enrolled for a long period of time i.e. for more than 5 years. There is no separate qualification that the members should be a patron member for five years and in any event, in terms of the order passed by this Court in Writ Petition No. 8593/2018, an ordinary member was allowed to become a patron member by depositing Rs.30,000/- as his patron membership fees and was made eligible to contest the elections to the Governing Council as the the relevant time there were no patron members available to contest the election. As such, the qualification aspect of the patron member is no more res-integra and it stood concluded by the earlier order passed by this Court in Writ Petition No. 8593/2018. Clause (1) of the Constitution of the Trust relating to Governing Council reads as under :-

“1) The Governing Council of the Society shall consist of 15 members and only those members of the Society who have a standing of 5 years will be eligible for membership of the Governing Council.”

Thus, the elections which are conducted by the officers appointed by this Court are by following due process of law and cannot be said to be vitiated

on account of the aforesaid challenge to the elections and as such, C.R. No. 1420/2019 is accepted. Hence I answer point No. 1 accordingly.

Contentions of the petitioners in Writ Petition No. 11880/2023

28) The contentions of the petitioners in Writ Petition No. 11880/2023 are as under :-

(i) On 16.7.2021 after elections of Governing Council, C.R. No. 596/2021 was filed by the petitioners in the office of Dy.C.C. Latur. The elections to Governing Council were held on 4.7.2021 in strict compliance of the Constitution of the Public Trust. 06 (six) members of Governing Council were elected by the General Body of the Public Trust. The elected President and Vice-President legally nominated the Secretary, Treasurer and other members of Governing Council as per the Constitution of Public Trust. 06 (six) members of Governing Council were elected by the General Body. All Heads of Institutions, those who are members of General Body, have participated in the elections and they have chosen by way of elections 06 (six) members of Governing Council. Copies of documents pertaining to elections to Governing Council held on 4.7.21 are being placed on record.

(ii) The Division Bench of this Hon'ble High Court vide judgment and order dated 14.3.2022 allowed W.P. No. 2421/2022 and directed the Dy.C.C. Latur to accept C.R. No.

596/2021 provisionally within a period of two weeks from the date of order. The said order is challenged by filing Review Application No. 96/2022. In Review Application No. 96/2022, the respondent No. 3 contended that elections of Governing Council were held for a period of five years on 5.5.2019 and C.R. No. 1420/2019 is pending before Charity Commissioner for adjudication. Therefore, subsequent elections of Governing Council held under leadership of the petitioner are not tenable. He further contended that in view of the order of status-quo passed by Jt.C.C. on 17.8.2021 in Appeal No. 10/2021, C.R. No. 596/2021 cannot be accepted provisionally.

(ii-a) From perusal of contents of Review Application No. 96/2023, it is contended that all the grounds raised by the respondent No. 3, have already been considered by the Division Bench while dismissing the Review Application No. 96/2022 vide judgment and order dated 25.3.2022.

(iii) The Jt.C.C. by name Mr. B.D. Kulkarni, who passed the order dated 17.8.2021 has tendered unconditional apology before this Hon'ble High Court in Contempt Petition No. 213/2022 in First Appeal No.177/2019. In the said Contempt Petition, the Jt.C.C. by name Mr. B.D. Kulkarni filed his affidavit in reply specifically stating in paragraph No. 4 as follows :-

"I say that, it would indeed be inappropriate if I do not advert to the contents of Para No. 7 of my order at Exh. "J" below Exh. 4 in Appeal No. 10 of 2021 dated 17.8.2021. On account of passing of an order of "status-quo", there were allegations and counter allegations that, the status-quo is being misinterpreted. Certain accusations were also made against me in the capacity as Presiding Officer. The statements in Para No. 7 are the outcome of Discomposure, which too were not expected to be a part of an order in judicial proceedings. My Sincere apologies for the same."

The Jt.C.C. initially passed the said order under influence and pressure applied by the respondent No. 3, but subsequently he realized his mistake and therefore, he has admitted his mistake by contending that he ought not to have passed such judicial order and thereby lot a inconvenience is caused to litigating parties in the said proceedings. Therefore, the respondent No. 3 cannot take benefits of the said order in support of their contentions.

(iv) After service of notice of contempt, the Dy.C.C. Latur by name Mrs. Heera Shelke appeared and filed her affidavit/say and thereby she tendered her unconditional apology. The Division bench accepted her unconditional apology and also given warning to Dy.C.C. not to pass order in such manner in future and in view of the undertaking

given by Mrs. Heera Shelke that she would pass order accepting C.R.No. 596/2021 by passing a fresh order, the Division Bench did not punish her for contempt.

(v) The respondent No. 3 had challenged the order dated 14.3.2022 passed in W.P. No. 2421/2022, the order dated 25.3.2022 passed in R.A.No. 96/2022 and the order dated 27.4.2022 passed in C.P. No. 2023/2022 by the Division Bench by filing S.L.P. (Civil) No. 15900/2022 before the Hon'ble Supreme Court. The Hon'ble Supreme Court did not entertain the S.L.P. (Civil) No. 15900/2022 and confirmed the orders passed by the Division Bench of this Hon'ble High Court as referred above. The only directoins are given to the Dy.C.C. Latur to decide both C.r.No. 596/2021 filed by the petitioner and C.R. No. 1420/2019 filed by the respondent No. 3 on its own merits within stipulated period.

(vi) The present petitioner has made attempt to transfer the proceedings of Inquiry bearing C.R.No. 596/2021 and C.R. No. 1420/2019 to another Dy.C.C., because he had apprehension about impartiality and bias. But, this Hon'ble High Court said that this request for transfer ought to have been made by the petitioner when the Contempt Petition was finally disposed of by the Division bench and therefore, the proceedings were not transferred.

(vii) The subsequent elections were held on 4.7.2021, were complete and in strict compliance of Constitution of the Trust. All head of Institutions were present in the General Body meeting and 30 members except 10 members belonging to the group of the respondent No. 3 and 7.

(viii) In view of the order dated 14.3.2022 passed in W.P. No. 2421/2022, the order dated 25.3.2022 passed in R.A. No. 96/2022 and the order dated 27.4.2022 passed in C.P. No. 203/2022 by the Division bench, the C.R.No. 596/2021 filed by the petitioner deserves to be accepted, but the lower authorities i.e. Jt.C.C. under pressure and influence applied by the respondent Nos. 3 and 7 rejected the said C.R. No. 596/2021 and accepted the illegal C.R. No. 1420/2019 filed by the respondent Nos. 3 and 7.

Contentions of the respondents in Writ Petition No. 11880/2023

29) The contentions of the learned Senior counsel for respondents Mr. R.N. Dhorde in Writ Petition No. 11880/2023 are as under :-

(i) A) **Elections held illegally and without authority.**

The C.R. No. 1420/2019 was rejected on 25.6.2021. The present petitioners created a record to show that on 26.6.2021 the notice was issued calling Special General meeting (Pg. 446). The said notice is signed by the present petitioners and the same is without authority and contrary to the constitution of the Trust. It is submitted that how

hurriedly the said notice is issued is evident from the record that immediately within a day the said alleged notice was issued and the reason given is the rejection of C.R.No. 1420/2019. In pursuant to the said notice the meeting was scheduled on 4.7.2021. Both the authorities below have held that while rejecting the C.R.No. 1420/2019 there were no directions to anybody to conduct the elections of the Trust and also the present petitioners did not approach by making necessary applications seeking permission for holding the elections. The Appeal No. 10/2021 was filed along with stay application before the learned Jt.C.C., Latur against the rejection of C.R. No. 1420/2019. Therefore, it was necessary on the part of the present petitioners at least to wait till the Appeal period is over. It is submitted that, the present petitioners have created said fraudulent record of showing holding of elections unopposed on 4.7.2021 as will be evident from the proceeding of the said alleged meeting dated 4.7.2021.

(ii) The petitioners reporting trustee has admitted the fact that Mr. Girwalkar was not President of the Trust at the time of the said elections and therefore in view of the constitution of the Trust he had no authority. The other witness namely Umakant Khanapure has also not produced any record to show that, he was authorized to call meeting of Special General Body. The said witness has also admitted that he did

not declared written program for election and also did not verify the list of the members nor called any objections. There were no forms published or printed and also no inward or outward register are maintained. The said Umakant Khanapure who acted as Election Officer neither maintained record nor, he is aware of who has written the minutes of the meeting. The authorities below have given specific findings that the Election Officer as well as the person who had shown to be served the notice have not maintained any record to that regard.

(iii) B) Provisional Acceptance of C.R. does not create any final right.

The petitioners have tried to contend that, their C.R. No. 596/2021 was accepted provisionally in view of the judgment and order dated 14.3.2022 passed in W.P. No. 2421/2022. It is submitted that the said order was obtained by fraud by suppressing the facts before this Hon'ble Court. As on the decision of the W.P. No. 2421/2022 there was already interim order passed by the learned Jt.C.C. on 17.8.2021 suspending the order of rejection of C.R. No. 1420/2019. The said fact was suppressed by the present petitioners from this Hon'ble Court in the said W.P. and therefore, did not approach this Hon'ble Court within clean hands. The pendency of the Appeal being continuation of proceedings therefore, in view of the suspension order

passed in Appeal, the further holding of elections as well as provisional acceptance of said fresh C.R. was by suppression of facts.

POINTS FOR DETERMINATION

30) From the above submissions of the learned counsel for the parties, following points arise for determination in Writ Petition No. 11880/2023 :-

- I) Whether elections held on 4.7.2021 in respect of C.R. No. 596/2021 are unlawful for non following the procedure of Election, so also for conducting the elections before the expiry of the earlier term and during the pending of Appeal No. 10/2021 filed in respect of C.R. No. 1420/2019 ?
- II) Whether the authorities who decided C.R. No. 1420/2019 and C.R. No. 596/2021 were biased in deciding the above C.Rs. And whether the decisions taking by the authorities are unlawful on account of bias towards the petitioners ?

CONSIDERATIONS

31) At the outset, it is pertinent to note that the election as reported in C.R.No. 1420/2019, the term of the managing committee is from 5.5.2019 to 4.5.2024. During the pendency of the appeal proceedings in C.R.No. 1420/2019, it is shown that the Special General Body meeting was called by issuing notice dated 26.6.2021 by a member Madhavrao Hanmantrao Patil and founder member Sambappa Trimbakappa Girwalkar to be held on 4.7.2021. The subject for the meeting is as under :-

"सभेपुढील विषय :-

१) कार्यकारी मंडळाचा बदल अर्ज क्रं. १४२०/१९ हा दिनांक

१५/०६/२०२१ रोजी नामंजूर झाल्यामुळे संस्थेच्या सुधारीत सन १९९४ च्या घटनेप्रमाणे नविन कार्यकारणी मंडळाच्या निवडणूका घेणे बाबत व योजना तयार करणे.

२) आयत्या वेळच्या येणा—या विषयावर चर्चा करून निर्णय घेणे.”

In the minutes of the General Body meeting held on 7.7.2021, it is recorded as under :-

“या सभागृहाच्या अध्यक्ष यांनी सर्व सभासदांचे मत ऐकून घेउन कार्यकारी मंडळाच्या निवडणूका घेण्यासाठी निवडणूक अधिकारी म्हणून अँड. उमाकांत महारूद्रप्पा खानापुणे यांची नियुक्ती करण्यात आली व त्यांनी सदर नियुक्ती स्वीकारून निवडणूक कार्यक्रम उपस्थित सभासदासमोर ठेवला त्यामध्ये संस्थेच्या सन १९९४ च्या घटनेनुसार अध्यक्षपदासाठी पात्र उमेदवार संस्थेचे संस्थापक सदस्य एकमेव अँड. सांबप्पा त्रिंबकप्पा गिरवलकर असल्यामुळे त्यांचे नांव अँड. गंगाधर विठ्ठलराव कोदळे यांना अध्यक्ष पदासाठी सुचविले त्याला अनुमोदन विजय नागनाथप्पा ठेवडकर यांनी दिले. त्यामुळे अध्यक्ष पदी अँड. सांबप्पा त्रिंबकप्पा गिरवलकर यांची बिनविरोध निवड करण्यात आली. अध्यक्ष पदासाठी सभागृहात सर्वानुमते मंजूरी देण्यात आली.

उपाध्यक्ष पदासाठी फाउंडर सभासद/पेट्रॉन सभासद/वेलविशर सभासद यापैकी कोणीही नसल्यामुळे सर्व सभासदांनी चर्चामधून उपाध्यक्ष पद हे अस्तित्वात असलेल्या सभासदा मधून निवडावे असे नमुद करण्यात आले. चर्चाअंती सर्व सभासदामधून श्री अदिनाथ बसवंतराव सांगवे यांचे नाव बस्वराज (राजू) गुरपादप्पा येरटे यांनी सुचीत केले. त्यांना अनुमोदन श्री राजेश्वर वैजनाथप्पा बुके यांनी दिले. उपाध्यक्षपदासाठी दुसरे काणते ही नांव सुचित केले नसल्यामुळे श्री. अदिनाथ बसवंतराव सांगवे यांचे एकमेव नांव उपाध्यक्ष पदाकरीता असल्यामुळे त्यांच्या नावाला सर्वानुमते मंजूरी देण्यात आली.”

32) From the above notice dated 26.6.2021, it is apparent that the meeting was called for holding discussion on the subject of preparing the

plan of election and in the meeting which was called by notice dated 26.6.2021 an unopposed election was conducted on 7.7.2021. The meeting was not called for holding elections but for discussion to hold elections. No election programme was published. Nominations were not invited. Nobody has filed nomination and unless the election programme is published, no elections could have been held in a general body meeting called for only preparing the plan of election. In the instant case, no notice for election is issued, no formal process of declaration of election programme was followed as had been taken place in the case of C.R. No. 1420/2019. It is contended that all the heads of the institution participated in the said General Body and only Governing Body elected in C.R. No. 1420/2019 was absent. However, the appellate authority has observed that the appellant in change report has examined three witnesses and all have admitted that no election programme was declared in writing and everything was done on oral instructions of founder member. The General Body meeting called by the notice dated 26.6.2021 is also not in terms of Clause (c) of the General Body rules and is quoted at para no.23 of this Judgment.

33) It is also required to be noted that the earlier C.R. No. 1420/2019 was pending before the appellate authority and had not attained finality. The term of Managing Committee reported in C.R. No. 1420/2019 had not expired. No permission was taken from the authorities to hold election as appeal was pending on 7.7.2021. In view of the acceptance of C.R. No. 1420/2019 and also for the reason that the elections held with regard to C.R. No. 596/2021 is not by fair process and not in accordance with the constitution of the trust, the said C.R. is rightly rejected by both the

authorities below.

34) The submissions made as regards the provisional acceptance of the C.Rs., it is required to be noted that the acceptance or rejection of the provisional C.Rs. are not relevant as it is the subject to final orders and the provisional acceptance does not give right to the committee provisionally accepted. So also, the allegation of misappropriation of funds cannot be gone into while accepting or rejecting election nomination. The petitioners can take such recourse by an independent proceedings against allegations of misappropriation as is available under the law for removal of trustees. Unless there is clear disqualification incurred on account of orders passed by the authorities under the Maharashtra Public Trust Act, the respondents cannot be barred from contesting the elections. Thus, the Jt.C.C. has rightly held that this is not the case for the interference in the impugned order passed by the authority below i.e. Dy.C.C. Latur and as such, both the writ petitions fail and are liable to be dismissed. Hence, I answer point No. 1 accordingly in this Writ petition.

CONSIDERATION OF COMMON POINT IN BOTH W.Ps.

35) In both the writ petitions, the the common point No. 2 that whether the authorities who decided C.R. No. 1420/2019 and C.R. No. 596/2021 were biased in deciding the above C.Rs. and whether the decisions taken by the authorities are unlawful on account of bias against the petitioners.

36) In this regard, it is to be noted that on 7.7.2022 the C.C., Mumbai in P.T.R. No. F/52/Latur, while deciding transfer application bearing Appln. No. CC/44/2022 under rule 36 (iii) of the Maharashtra Public Trust Act has

observed in para No. 17 as under :-

"17. ...It is seen from the reply that following transfer applications were filed by the applicants -

(1) M.A. No. 94/2013 before the P.D.J. Latur to transfer M.C.A. No. 78/2012, 79/2012, 80/2012 and 26/2011 to any other Court.

(2) Transfer petition No. 2/2014 before the Joint Charity Commissioner to transfer the Inq. No. 167/2014 from Deputy Charity Commissioner to any other Deputy Charity Commissioner.

(3) Transfer Application No. 145/2019 before the Joint Charity Commissioner to transfer C.R. No. 1420/2019 from the file of Deputy Charity Commissioner to any other Deputy Charity Commissioner.

(4) Transfer Petition No. 146/2019 before the Joint Charity Commissioner for transferring the proceeding from Deputy Charity Commissioner to any other authority.

(5) Transfer Application No. 31/2021 for transferring the Appeal No. 10/2021 pending before the Joint Charity Commissioner, Latur to any other authority. Accordingly, that Appeal No. 10/2021 was transferred to the Joint Charity Commissioner, Mumbai."

37) From the above order, it is apparent that the petitioners have filed various transfer proceedings against different officers including the judicial officers. The petitioners have initiated Contempt Petition No. 203/2022 seeking initiation of action against Dy.C.C. The contempt notice was issued because this Court had directed the Dy.C.C. to provisionally accept the C.R.

No. 596/2021. However, the Dy.C.C., Mumbai in view of the conflicting orders, one from the appellate authority in C.R. No. 1420/2019 of status-quo and one by this Court directing to accept the provisional C.R. No. 596/2021, had declined to record C.R. No. 596/2021 provisionally and therefore, this Court had issued contempt notice to the Dy.C.C. Apology was tendered by the Dy.C.C. to this Court. The Division Bench of this Court vide order dated 27.4.2022 in Contempt Petition No. 203/2022, while disposing of the Contempt Petition, has observed as under :-

"13. The Deputy Charity Commissioner is directed to pass a fresh order within two weeks from today. It is made clear that merely because this Court has directed the Deputy Charity Commissioner to accept change report submitted by the petitioner on provisional basis under section 22 (2) of the Act, that would not mean a direction to accept the change report submitted by the petitioner without going into merits and also the maintainability of the change report submitted by the respondents. The Deputy Charity Commissioner shall consider the objections that are already raised by the objectors and that would be raised during the argument and shall pass order in accordance with law on the said provisional change report, on its merit."

38) Thus, this Court having noticed that although earlier directed to accept C.R. No. 596/2019 provisionally, had permitted the Dy.C.C. to pass order in accordance with law on its own merits. Thereafter, the petitioners have filed various transfer applications before various authorities and the matter had travelled to Supreme Court.

39) On 7.6.2022 the Hon'ble Supreme Court passed order in Petition (s) for Special Leave to Appeal (c) Diary No. 15900/2022, as under :-

"Permission to file the Special Leave Petition (s) is granted.

Having heard the learned counsel for the respective parties, we direct the Deputy Charity Commissioner, before whom the Change Report Nos. 1420 of 2019 and 596 of 2021 are pending, to decide and dispose of the same in accordance with law and on its own merits, after giving opportunity to all concerned, at the earliest and preferably within three months from the date of receipt of this order.

The concerned parties are directed to cooperate with the Deputy Charity Commissioner for early disposal of the aforesaid Change Reports. If any of the parties try to delay the hearing of the matter, it will be open to the Deputy Charity Commissioner to proceed further with the Change Reports ex-parte after passing a reasoned order.

With the above observations and directions, the Special leave Petitions are disposed of."

40) Thereafter, another transfer application was filed before the appellate authority and the same was finally dealt with by this Court in Writ Petition No. 7138/2022 and passed order dated 12.7.2022, wherein at para No. 15, this Court observed as under :-

"15. Though the transfer application, as stated by the learned advocate Mr. N.P. Patil Jamalpurkar was drafted on 18.5.2022 but was not till then filed or registered, the fact remains that the Supreme Court had passed the order on 7.6.2022 whereas this transfer application was already drafted on 18.5.2022. If such was the state of affairs, it not while passing the order by the Supreme Court at least at the end, the petitioner could have hinted at the perception he was carrying about the impartiality about the Deputy Commissioner, to whom the direction was given by the Supreme Court to decide the Change Report finally within a stipulated time of three months. That opportunity was not availed of by the petitioner for whatever reasons best known to him."

41) The order passed by this Court in Writ Petition No. 7138/2022 dated 12.7.2022 was challenged before the Supreme Court and the Hon'ble Supreme Court vide order dated 29.7.2022 in Petition(s) for Special Leave

to Appeal (C) No. (s). 12756/2022 has observed as under :-

“Mr. Dama Seshadri Naidu, learned Senior Advocate, appearing on behalf of the petitioner has stated at the Bar that, as such, the petitioner does not allege any further mala fides against the Deputy Charity Commissioner before whom the proceedings are pending. It is submitted that, at the relevant time, considering the fact situation there was some apprehension on the part of the petitioner which prompted him to file an application for transfer, which the petitioner does not press. He has stated at the Bar that the petitioner has full faith and trust in the Deputy Charity Commissioner before whom the proceedings are pending. Mr. Naidu, learned Senior Advocate, on instructions, seeks permission to withdraw the present Special Leave Petition.

Permission is, accordingly, dismissed.

The Special Leave Petition stands dismissed as withdrawn.”

42) From the above noted facts, it would be clear that the petitioners have filed multiple applications for transfer notwithstanding that there is direction by the Supreme Court to Dy.C.C. to decide the matter on merits and so also in subsequent orders before Supreme Court, the petitioners have submitted that they do not allege any further mala-fide against Dy.C.C. Notwithstanding submissions made before the Supreme Court, allegations are raised against Dy.C.C., so also against Jt.C.C., which needs to be rejected. After having conceded the above position before the Hon’ble Supreme Court, it is not open to the petitioners to re-agitate the grievance of mala-fide.

43) It is required to be noted that on the merits of the matter this Court has not found any error in the impugned orders of Dy.C.C. and Jt.C.C..

Thus, the order passed by both the authorities are lawful and both the writ petitions are dismissed by answering the above common point accordingly by giving following directions.

44) The term of the managing committee as reported in C.R. No. 1420/2019 is coming to an end on 4.5.2024. The C.C., Mumbai is directed to depute a responsible senior level Officer to conduct the elections of Mahatma Basweshwar Educational Society, Latur by following the due process of law. The election process to commence before one month of the expiry of the term of the Managing Committee in C.R. No. 1420/2019 i.e. from the first week of the April, 2024 and the election process shall be concluded by 1st week of May 2024 so as to ensure fair and independent elections of the trust.

[ARUN R. PEDNEKER J.]

SSC/