

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

WRIT PETITION NO.9430 OF 2024

Dr. Mehernosh Jamshed Jassawalla

...Petitioner

V/s.

Dr. Lalitrao Bhaskarrao Patil and Ors.

...Respondents

Mr. Sanjiv Gorwadkar, *Senior Advocate i/b. Mr. Suresh M. Kamble for the Petitioner.*

Mr. Amrut Joshi *with Mr. Yazadi Udwadiai i/b. Mr. Saakshat Relekar for Respondent No.1.*

Ms. Gauri Jadhav 'A' Panel *with Mrs. M.S. Bane, AGP for Respondent -State.*

Mr. Nikhil Mishra *with Mr. Shrawan Purohit, AGP for Respondent - State.*

CORAM : SANDEEP V. MARNE, J.

Judgment reserved on : 8 January 2025.

Judgment pronounced on : 14 January 2025.

Judgment :

1. **Rule.** *Rule* is made returnable forthwith. With the consent of the learned counsel appearing for the parties, the Petition is taken up for final disposal.

2. The issue that arises for consideration in the present Petition is whether it is permissible for the Charity Commissioner to

try and entertain application for removal of trustees under the provisions of Section 41D of the Maharashtra Public Trust Act, 1950 (MPT) when appointment of the said trustees is yet to be accepted in an enquiry under Section 22. In other words, whether application for removal of trustees under Section 41D of the MPT Act can be decided during pendency of Change Reports relating to their very appointments.

3. The issue arises in the light of challenge raised by the Petitioner to the Order dated 4 June 2024 passed by the learned Charity Commissioner, Maharashtra State, Mumbai, rejecting the Petitioner's Application at Exhibit-106 seeking framing of issues of maintainability and jurisdiction in Application No. 11 of 2023 filed by Respondent Nos. 1 and 2 under the provisions of Section 41D of the MPT Act for suspension/removal/dismissal of Petitioner and of Respondent Nos.3 to 25 from the trusteeship of Respondent No.26-Trust. By filing Application at Exhibit-106, Petitioner contended that the application for removal of trustees under Section 41D of the MPT Act cannot be entertained during pendency of Change Reports under the provisions of Section 22 of the MPT Act. The Charity Commissioner has rejected Petitioner's Application at Exhibit-106 refusing to frame the issue relating to its jurisdiction or maintainability.

4. Brief facts leading to filing of the Petition are that College of Physicians and Surgeons of Mumbai is a Society brought into existence in the year 1912 and registered under the provisions of Societies Registration Act, 1860 in the year 1913. After enactment of the MPT Act, the College of Physicians and Surgeons of Mumbai came to be registered as Public Trust at P.T.R. No.F-1337(Mumbai). The

Trust has been established with the objective of encouragement of study of medicine and surgery in all branches according to the methods of western teaching. Trust awards various degrees, diplomas and certificates/licenses to the persons desirous of practicing medicine and surgery according to western methods. The Trust is also an examining body authorising Medical Degree (post MBBS) and is entitled to issue degrees, diplomas, licenses and certificates under the Indian Medical Act, 1956 and Maharashtra Medical Act, 1965. For management and administration of the Trust, constitution and bye-laws have been formulated.

5. It appears that disputes arose about management and control of the Trust in the year 2013-2014. Several Change Reports are filed from time to time under the provisions of Section 22 of the MPT Act seeking to report *inter alia* election of new trustees, changes relating to immovable properties etc. It appears that as of now, there are as many as 13 Change Reports pending before the Deputy Charity Commission viz., DYCC/3090/18, DYCC/5695/18, DYCC/5697/18, DYCC/5696/18, DYCC/5335/19, DYCC/5336/19, DYCC/1251/2020, DYCC/1357/2020, DYCC/1400/2020, DYCC/1468/2021, YCC/47/2022, DYCC/365/2023, DYCC/1535/2023. All the above Change Reports are pending and it appears that the changes relating to entries in Schedule-I about names of trustees are yet to be accepted by the Deputy Charity Commissioner.

6. Considering the limited issue raised in the present Petition, it is not necessary to go into the allegations and counter allegations made by the two rival groups relating to management and control of affairs by the Trust. Suffice it to notice that several Change Reports reporting election and appointment of trustees filed under

Section 22 of the MPT Act are pending before the Charity Commissioner. It is the case of Petitioner and Respondent Nos. 3 to 25 that presently there are 28 Members of Council of Trust and the Change Report for amendment of the constitution is pending adjudication before the Deputy Charity Commissioner. It is claimed that the Council consists of 24 Council Members elected by the fellow of the Trust while 4 are nominated viz. Joint Secretary of Health and Family Welfare of Government of India, Deputy Director General of Directorate General of Health Services, eminent academician appointed by Indian Medical Commission of India and one representative of Government of Maharashtra. As per the bye-laws every year maximum three members of the Council retire by rotation and accordingly nature and status of the Council changes every year. It appears that at present names of Petitioner and Respondent Nos.3 to 25 are not reflected in Schedule-I of the Trust for the current tenure as Change Reports relating to their election is pending and contested. It is therefore claimed by Petitioner and Respondent Nos.3 to 25 that on account of non-inclusion of their names in Schedule-I of the Trust, their status as trustees is yet to be adjudicated in an enquiry under Section 22 of the MPT Act.

7. In the above factual background, Respondent Nos.1 and 2, who are members of the Trust and claim to be interested in its proper management and administration as well as beneficiaries of the trust, filed Application No. 11 of 2023 before the Charity Commissioner under the provisions of Section 41D of the MPT Act seeking direction for suspension/removal/dismissal of Petitioner and Respondent Nos.3 to 25 by levelling various allegations, more particularly detailed in the application filed by them. Application No. 11 of 2023 filed by Respondent Nos.1 and 2 is opposed by filing of written statements by

the Council Members, who are impleaded as Respondents to the said Application. Respondent Nos.1 and 2 have filed their rejoinder to the said written statements.

8. In the pending Application No.11 of 2023 filed under Section 41D of the MPT Act, Petitioner (Respondent No.5 in the application) filed Application at Exhibit-106 for framing of issue of maintainability and jurisdiction and for dismissal of the Application on the point of jurisdiction and maintainability. The said Application at Exhibit-106 was resisted by Respondent Nos.1 and 2 by filing their reply. After hearing both the sides, the Charity Commissioner proceeded to reject Application at Exhibit-106 by his order dated 4 June 2024, which is subject matter of challenge in the present Petition.

9. Mr. Gorwadkar, the learned Senior Advocate appearing for the Petitioner would submit that the learned Charity Commissioner has erred in rejecting Petitioner's prayer for framing of issues relating to jurisdiction and maintainability. He would submit that the Application filed by Respondent Nos.1 and 2 for removal of trustees under Section 41D of the MPT Act is *ex facie* not maintainable during pendency of enquiry under Section 22 of the MPT Act on Change Reports relating to reporting of changes about elections and appointments of the Council Members. That as of now names of Petitioner and Respondent Nos.3 to 25 are not even included in Schedule-I of the Trust and their status as trustees would get crystalised only upon decision of the pending Change Reports. He would therefore submit that there is no question of removal of a person as a trustee, who is yet to be accepted as a trustee by the Deputy Charity Commissioner by conduct of enquiry under Section 22

of the MPT Act. He would submit that confirmed status as a trustee of the Trust is a *sine qua non* for maintaining an application for removal of a trustee under Section 41D of the MPT Act. He would submit that in the event of the Change Reports being rejected, the same would amount to restoration of *status quo ante* thereby denying trusteeship to the persons concerned. That therefore during pendency of enquiry under Section 22 of the MPT Act, it is impermissible for any member of the Trust or beneficiary to file an application for removal of non-existing trustee by invoking jurisdiction under Section 41D of the MPT Act. He would submit that jurisdiction of Section 41D is entirely dependent on outcome of enquiry under Section 22 of the MPT Act. Mr. Gorwadkar would then rely upon judgment of Division Bench of this Court in ***Dinkar Shankarrao Patil and Ors. V/s. Dr. Sheshrao Shankarrao Patil and Ors.***¹ in support of his contention that expeditious decision of Change Reports under Section 22 of the MPT Act would be the correct course of action before entertaining an application for removal of trustee under Section 41D of the MPT Act. That though the judgment in ***Dinkar Shankarrao Patil*** (supra) is in the context of permissibility to entertain the proceedings under Section 41A of the MPT Act during pendency of Change Reports under Section 22, the same analogy would apply in the present case as well. Lastly, Mr. Gorwadkar would contend that the prayer in the Application at Exhibit-106 was essentially for framing of issues relating to jurisdiction and maintainability. That if the Charity Commissioner was not inclined to dismiss the Application at Exhibit-106 at this stage, he ought to have at least framed issues relating to jurisdiction and maintainability and answered the same while deciding the main Application. He would accordingly pray for setting aside impugned order passed by the Charity Commissioner.

1. 2008(3) *Mh. L.J.* 833

10. Petition is opposed by Mr. Amrut Joshi, the learned counsel appearing for Respondent No.1. He would submit that Petition suffers from suppression of facts as similar attempt to get Application No.11 of 2023 dismissed was unsuccessfully made by the Petitioner and Respondent No.3 on the ground of maintainability by challenging order dated 8 May 2023. That order dated 8 May 2023 was set aside with consent of both the parties by this Court by order dated 7 November 2023 and in the said order, this Court recorded statement on behalf of Petitioner and Respondent No.3 for withdrawal of Applications at Exhibits -58 and 62, which had also sought to question maintainability of Application No.11 of 2023. That the Petitioner is attempting to take another bite at the cherry by filing baseless Application at Exhibit-106 and that therefore, this Court would be loath in entertaining the present Petition and interfering in the impugned order dated 4 June 2024.

11. Without prejudice to the above objection, Mr. Joshi would contend that mere pendency of Change Report would not mean that the Change has actually not occurred or that as Petitioner and Respondent Nos.3 to 25 can claim any immunity from consequences arising out of their actions. He would rely upon judgment of this Court in ***Chembur Trombay Education Society & Ors. V/s. D.K. Marathe and Ors.***² in support of his contention the enquiry under Section 22 of the MPT Act is only for ascertainment of the factum of change, which has already taken place and that therefore mere pendency of Change Report does not mean that actions taken by Petitioner and Respondent Nos.3 to 25, in their capacity as trustees, would go scot-free. He would submit that the Application at Exhibit-

2. 2002(3) Bom. C.R. 161

106 is essentially aimed at avoiding the accountability for acts done by Petitioner and Respondent Nos. 3 to 25 by citing the pretext of pendency of Change Reports. That the plea adopted by them is more of convenience in enjoying the position as trustees but avoiding consequences in respect of actions and decisions taken by them in their capacity as trustees. Mr. Joshi would submit that Charity Commissioner has rightly appreciated the above position and has correctly dismissed baseless Application at Exhibit-106 preferred by the Petitioner. He would pray for dismissal of the Petition.

12. I have also heard Ms. Jadhav and Mr. Mishra, the learned AGPs for Respondent–State.

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

14. The short issue that arises for consideration is whether the proceedings for removal of a trustee under the provisions of Section 41D of the MPT Act can be entertained and decided during pendency of enquiry for ascertainment of change under Section 22 of the MPT Act. Under provisions of Section 22 of the Act, the trustees are required to report any change that occurs in the entries recorded in the register kept under Section 17 of the MPT Act to the Deputy or Assistant Charity Commissioner within the time prescribed. Under provisions of Sub Section (2) of Section 22 of the MPT Act, the Deputy or Assistant Charity Commissioner is required to hold an enquiry in the prescribed manner for ascertaining whether any change has occurred in any of the particulars recorded in the register. Upon recording satisfaction under provisions of Sub-section (3) of Section 22 by holding an enquiry under Sub-section (2) that the change has

occurred in any of the entries recorded in the register, he is required to record a finding to that effect alongwith reasons. Under provisions of Section 17 of the MPT Act it is the duty of Deputy or Assistant Charity Commissioner to keep and maintain such books, indices and other registers as are prescribed under the Rules. Under Rule 5 of the Maharashtra Public Trust Rules, 1951 (**Rules**), in every Public Trusts Registration Office or Joint Public Trusts Registration Office a Register of Public Trusts in the form of Schedule I in respect of every registered Public Trust is required to be maintained. The Schedule *inter alia* includes details relating to the name of the Trust, names of the trustees, mode of succession, objectives of the Trust, particulars of documents creating the Trust, movable and immovable properties of the Trust, etc.

15. Thus, every time there is any change in the names of the Trustees, included in the register maintained under Schedule I, such change is required to be reported by the trustees under provisions of Section 22 of the MPT Act and the Assistant or the Deputy Charity Commissioner, after holding an enquiry as prescribed, which is in the nature of a judicial enquiry, is supposed to record a finding with regard to such change.

16. Section 41D of the Act deals with suspension, removal and dismissal of Trustees, which provides thus:

41D. Suspension, removal and dismissal of trustees.-

(1) The Charity Commissioner may, either on application of a trustee or any person interested in the trust, or on receipt of a report under section 41B or suo motu may suspend, remove or dismiss any trustee of a public trust, if he,-

- (a) makes persistent default in the submission of accounts report or return;

- (b) wilfully disobeys any lawful orders issued by the Charity Commissioner under the provisions of this Act or rules made thereunder by the State Government;
 - (c) continuously neglects his duty or commits any malfeasance or misfeasance, or breach of trust in respect of the trust;
 - (d) misappropriates or deals improperly with the properties of the trust of which he is a trustee; or
 - (e) accepts any position in relation to the trust which is inconsistent with his position as a trustee;
 - (f) if convicted of an offence involving moral turpitude.
- (2) (a) When the Charity Commissioner proposes to take action under subsection (1), the Charity Commissioner may issue notice to the trustee or the person against whom the action is proposed to be taken only when he finds that there is prima facie material to proceed against the said person.
- (b) The trustee or person to whom a notice under clause (a) is issued, shall submit his reply thereto within fifteen days from the date of receipt of notice.
- (c) If the person fails to give reply to the notice issued under clause (a) or the Charity Commissioner finds that the reply is not satisfactory, the Charity Commissioner shall frame charges against the said person within fifteen days of the filing of the reply or the default in the filing of reply, as the case may be, and give the said person an opportunity of meeting such charges and after considering the evidence adduced against him and in his favour, may pass order regarding suspension or removal or dismissal within three months from the date of framing of charges. If it is not practicable for the Charity Commissioner to issue notice, frame charges and pass final orders within stipulated time, he shall record reasons for the same.
- (d) The order of suspension, removal or dismissal shall state the charges framed against the trustee, his explanation, if any, and the finding on each charge, with reasons therefor.
- (3) Pending disposal of the charges framed against a trustee the Charity Commissioner may place the trustee under suspension.
- (4) Where the Charity Commissioner has made an order suspending, removing or dismissing any trustee and such trustee is the sole trustee or where there are more than one trustee and the remaining trustees, according to the instrument of trust, cannot function or administer the trust without the vacancy being filled, then in that case the Charity Commissioner shall appoint a fit person to discharge the duties and perform the function of the trust, and such person shall hold office only until a trustee is duly appointed according to the provisions of the instrument of trust.
- [(5) ***]

(6) An appeal shall lie to the Court against the order made under sub-section (1), as if such decision was a decree of a district court as a court of original jurisdiction from which an appeal lies, within sixty days from the date of the order.

(7) The order of the Charity Commissioner shall, subject to any order of the Court or in appeal, be final.

17. Thus, the Charity Commissioner can entertain an application of a trustee or of any person interested in the Trust or after receipt of report under Section 41D or even *suo motu* suspend, remove or dismiss any trustee of the Public Trust in the event of occurrence of the eventuality enumerating in Section 41D (1) of the MPT Act. It is sought to be contended by the Petitioner that for taking action of suspension, removal or dismissal of a trustee, what essentially required is confirmation of a status of a person as a trustee of decision of the Change Report by which change relating to his/her appointment as a trustee is accepted by the Assistant or Deputy Charity Commissioner. In other words, it is sought to be contended that till the enquiry into the Change Report for election or appointment of Trustee is completed and the change is recorded in Schedule-I, such elected or appointed person does not acquire status of a trustee and that therefore, there is no question of his removal under the provisions of Section 41D of the MPT Act. It is thus sought to be contended that confirmed status as a trustee is a *sine qua non* for exercise of power for his/her removal by invoking the jurisdiction by the Charity Commission under Section 41D of the MPT Act. It is thus contended that during pendency of a Change Report relating to election or appointment of a person as a trustee, it is impermissible to take any decision relating to his/her suspension, removal or dismissal under Section 41D of the MPT Act.

18. To resolve the issue raised in the Petition, it is necessary to first examine the exact effect of reporting of a change under the provisions of Section 22 of the MPT Act. What is to be done by a reporting trustee under Section 22 of the MPT Act is to merely report the change that has occurred in any of the entries recorded in the Register maintained under Schedule-I. Thus, once new trustees are elected or appointed, which necessitates effecting of change in the entries maintained in the Register under Schedule-I, enquiry into such change under Section 22 of the MPT Act is only to ascertain as to whether the change has indeed occurred or not. Section 22 of the MPT Act reads thus:-

22. Change.-

(1) Where any change occurs in any of the entries recorded in the register kept under section 17, the trustee shall, within 90 days from the date of the occurrence of such change, or where any change is desired in such entries in the interest of the administration of such public trust, report such change or proposed change to the Deputy or Assistant Charity Commissioner in charge of the Public Trusts Registration Office where the register is kept. Such report shall be made in the prescribed form.

Provided that, the Deputy or Assistant Charity Commissioner may extend the period of ninety days for reporting the change on being satisfied that there was a sufficient cause for not reporting the change within the stipulated period subject to payment of costs by the reporting trustee, which shall be credited to the Public Trust Administration Fund.

(1A) Where the change to be reported under sub-section (1) relates to any immovable property, the trustee shall, along with the report, furnish a memorandum in the prescribed form containing the particulars (including the name and description of the public trust) relating to any change in the immovable property of such public trust, for forwarding it to the Sub-Registrar referred to in sub-section (7) of section 18.

Such memorandum shall be signed and verified in the prescribed manner by the trustee or his agent specially authorised by him in this behalf.

(2) For the purpose of verifying the correctness of the entries in the register kept under section 17 or ascertaining whether any change has occurred in any of the particulars recorded in the register, the Deputy or Assistant Charity Commissioner may hold an inquiry in the prescribed manner:

Provided that, in the case of change in the names and addresses of the trustees and the managers or the mode of succession to the office of the trusteeship and managership, the Deputy or Assistant Charity Commissioner may pass order provisionally accepting the change within period of fifteen working days and issue a notice inviting objections to such change within thirty days from the date of publication of such notice :

Provided further that, if no objections are received within the said period of thirty days, the order accepting the change provisionally under the first proviso shall become final and entry thereof shall be taken in the register kept under section 17 in the prescribed manner :

Provided also that, if no objection are received within the said period of thirty days, the Deputy or Assistant Charity Commissioner may hold an enquiry in the prescribed manner and record a finding, as provided by sub-section (3) of this section, within three months from the date of filing objections.

(3) If the Deputy or Assistant Charity Commissioner, as the case may be, after receiving a report under sub-section (1) and holding an inquiry, if necessary under sub-section (2), or merely after holding an inquiry under the said sub-section (2), is satisfied that a change has occurred in any of the entries recorded in the register kept under section 17 in regard to a particular public trust, or that the trust should be removed from the register by reason of the change, resulting in both the office of the administration of the trust and the whole of the trust property ceasing to be situated in the State, he shall record a finding with the reasons therefor to that effect; and if he is not so satisfied, he shall record a finding with reasons therefor accordingly. Every inquiry held, either upon receipt of a report under sub-section (1) or merely held under sub-section(2), shall be completed within a period of one year from the date of initiating such an enquiry. Where such inquiry is not completed within a stipulated period of one year, the reasons for delay shall be recorded. Any such finding shall be appealable to the Charity Commissioner. The Deputy or Assistant Charity Commissioner shall amend or delete the entries in the said register in accordance with the finding which requires an amendment or deletion of entries and if appeals or applications were made against such finding, in

accordance with the final decision of the competent authority provided by this Act. The amendments in the entries so made subject to any further amendment on occurrence of a change or any cancellation of entries, shall be final and conclusive.

(3A) The Deputy or Assistant Charity Commissioner may, after such detailed and impartial inquiry and following such procedure as may be prescribed, de-register the trust on the following grounds :—

- (a) when its purpose is completely fulfilled ; or
- (b) when its purpose becomes unlawful ; or
- (c) when the fulfilment of its purpose becomes impossible by destruction of the trust- property or otherwise ; or
- (d) when the trust, being revocable, is expressly revoked ;
or
- (e) when the trustees are found not doing any act for fulfilling object of the trust :

Provided that, no trust shall be de-registered under clause (e) unless its trustees have committed default in reporting the change under sub-section (1), in submission of the audited accounts as prescribed by sub-section (2) of section 33 or sub-section (1A) of section 34 or in making any other compliance prescribed by or under this Act for a period of five years from the last date of reporting the change, submission of the accounts or making the compliance, as prescribed by or under this Act or the rules made thereunder, as the case may be.

(3B) The Deputy or Assistant Charity Commissioner may take over the management of properties of the trust de-registered under sub-section (3A) and pass such necessary orders for the same as he deems fit and may, if he considers it expedient, dispose them of by sale or otherwise and deposit the sale proceeds in the Public Trusts Administration Fund established under section 57.

(4) whenever an entry is amended 9[or the trust is removed from the register] under sub-section (3), the Deputy or Assistant Charity Commissioner, as the case may be, shall forward the memorandum furnished to him under sub-section (1A), after certifying the amended entry 10 or the removal of the trust from the register] to the Sub-Registrar referred to in sub-section (7) of section 18, 11 for the purpose of filing in Book no. I under section 89 of the Indian Registration Act, 1908 (XVI of 1908), in its application to the State of Maharashtra.

19. Thus, decision of a Change Report under the provisions of Section 22 merely records the change in an entry in the Register. Decision of the Change Report does not by itself effect appointment of trustees. This principle is enunciated by the learned Single Judge of this Court (*His Lordship Justice A. M. Khanwilkar as he then was*) in ***Chembur Trombay Education Society*** (supra). In paragraph 11 this Court held as under:

11. ... The law with regard to the efficacy of any change brought about and its application is no more *res integra*. The Apex Court in decision reported in A.L.R. 1993 S.C.W. 3006; (Managing Committee, Khalsa Middle School and another v. Smt. Mohinder Kaur and another), has considered this aspect of the matter. The Apex Court was called upon to examine similar provisions of the Societies Registration Act, 1860. The scheme of section 12-A of that Act is more or less same as section 22 of the Bombay Public Trusts Act. The Apex Court compared the said provision with the provisions of sections 18 and 19 of the Companies Act which mandate that the alteration or amendment to the Memorandum of Association of the Company takes effect from the date of its registration only. In that context the Apex Court in para 11 of the said judgment has observed that in absence of any requirement in the Act that the alteration in the Rules and Regulations must be registered with the Registrar, it cannot be held that registration of the amendment is a condition precedent for such an alteration to come into effect. **A priori, any amendment or change brought about in accordance with law would come into effect from the date of resolution of the Society to bring about such a change.** This proposition is fortified from the plain language of section 22 of the Bombay Public Trusts Act. The said section requires that where any change occurs in any of the entries recorded in the register kept under section 17, the trustee shall, within 90 days from the date of the occurrence of such change, report such change to the Deputy or Assistant Charity Commissioner, as the case may be. The dictionary meaning of expression "occur" as observed in the Blacks Law Dictionary is: "To happen; to meet one's eyes; to be found or met with; to present itself; to appear; hence, to befall in due course; to take place; to arise."

Giving the natural meaning to this word in section 22 of the Act, coupled with the principle enunciated by the Apex Court that when the Act does not require that registration of any change is a condition precedent to come into effect, I have no hesitation in taking the view that the amendment to the constitution as well as subsequent elections of the President and members of the Governing Council, therefore, came into effect from the date of the

respective resolutions of the general body. **The enquiry postulated under section 22 is only to ascertain the factum as to whether the change has occurred or not. In the event, the competent authority is satisfied that the change has not occurred in accordance with law, only then that change will have to be undone and status quo ante will have to be restored. A fortiori, resolution of the general body of the Society is sufficient to ignite the change of amendment in the constitution as well as of electing new general body for administering the affairs of the Society. The fact that the change report is pending consideration before the Charity Commissioner, would be of no avail. Understood thus, as a necessary corollary, it will have to be held that the respondent-Shri Marathe ceased to be the President of the Society from the date when the General Body elected another President in its meeting dated June 18, 1995. If this be the position, the respondent-Shri Marathe will have no right whatsoever to continue in the post of president and, there would be no question of granting any mandatory relief at this stage.**

(emphasis and underlining supplied)

20. Thus, as held by this Court in ***Chembur Trombay Education Society*** (supra) conduct of elections by a Trust or adoption of resolution by the general body is sufficient to ignite the election of new general body for administering the affairs of the society/trust and mere pendency of Change Report before the Charity Commissioner does not mean that new general body for administering affairs of the Trust has not come into effect. In fact, in ***Chembur Trombay Education Society*** one of the submissions raised on behalf of Respondent therein was that the change would come into effect only after the same is accepted by the Charity Commissioner. The submission is however not accepted by this Court. Therefore, merely because Change Report for reporting election/appointment of Petitioner and Respondent Nos. 3 to 25 as Council Members is pending, would not mean that change has not occurred.

21. Section 41D of the MPT Act is aimed at taking action against a trustee committing persistent defaults in submission of

accounts reports, disobeying orders of the Charity Commissioner, neglecting his duties, committing act of malfeasance or misfeasance, or breach of trust, misappropriating the property of the Trust or is convicted in an offence involving moral turpitude. If the objective behind enactment of Section 41D of the MPT Act is borne in mind, it is difficult to accept the proposition which Mr. Gorwardkar seeks to advance. If his contention is accepted, a person, whose appointment as a trustee is reported through a Change Report, cannot be even suspended from his position upon his conviction for an offence involving moral turpitude during pendency of such Change Report. Similarly, a trustee, who has misappropriated the properties of the Trust would continue to hold the position as a trustee and remain in charge of the affairs of the Trust under a specious plea that action for his suspension, removal or dismissal cannot be taken during pendency of Change Report in relation to his appointment. Such an interpretation would completely frustrate the entire objective behind enactment of Section 41D of the MPT Act.

22. In my view therefore, mere pendency of the Change Reports in the present case would not mean that the change has not occurred nor pendency of Change Report would provide an umbrella of protection to any of the persons appointed as trustees in respect of actions taken by them in their capacities as trustees. In the present case, some of the Change Reports are pending for 7 long years since the year 2018 and it is inconceivable that if any Council Member misconducts, the Charity Commissioner is precluded from initiating action against him/her under Section 41D of the MPT Act under specious plea that the report in respect of the change relating to his/her election as trustee is pending adjudication before the Deputy Charity Commissioner. In fact, in most of the cases even while

rejecting the Change Reports, the Assistant or Deputy Charity Commissioners consciously make a direction recognising the role of persons whose Change Reports are rejected as *de facto* trustees solely for the purpose of holding them liable in respect of the actions taken by them while managing the affairs of the Trust. In that view of the matter, Petitioner and Respondent Nos.3 to 25 cannot contend that application for their suspension, removal or dismissal under the provisions of Section 41D of the MPT Act cannot be decided by the Charity Commissioner until the Deputy Charity Commissioner decides all the Change Reports. While deciding the Change Report, the Deputy Charity Commissioner would merely ascertain the factum as to whether change has occurred or not. Therefore, till such ascertainment is made, persons claiming to be trustees cannot escape consequences of acts done by them while being in control of the management and affairs of the Trust. I am therefore, not inclined to accept the submission of the Petitioner that confirmation of status as trustee of the Trust by decision of Change Report under Section 22 of the MPT Act is a *sine qua non* to entertain application for suspension, removal or dismissal of trustee under Section 41D of the MPT Act.

23. Mr. Gorwadkar has relied upon judgment of Division Bench of this Court in ***Dinkar Shankarrao Patil*** (supra). In case before the Division Bench, Change Report was submitted reporting election and appointment of the Managing Committee. During pendency of the Change Report, some of the members of the Trust filed Application under Section 41A of the MPT Act, which was allowed by the Assistant Charity Commissioner directing that the President and other office bearers had ceased in their status as office bearers of the Trust and directing the earlier managing body, as recorded in Schedule-I of the Public Trust Act, to manage the day to

day affairs of the Trust. In the light of the above factual position, the issue before the Division Bench of this Court was whether it was permissible for the Assistant Charity Commissioner to entertain and decide application for issuance of directions under Section 41A of the Act during pendency of the Change Report. The Division Bench held in paragraphs 12 to 15 of the judgment as under:

12. Now, turning to the case on hand, there is no dispute that two change reports are filed and pending before the learned Assistant Charity Commissioner on behalf of the petitioners as well as respondents 1 and 2. Both of them are claiming that general body meeting of the trust in question had taken place, on a particular date and few persons have been elected either as a member of the managing committee and/or office bearers of the trust in question. In relation to this aspect, both learned counsel have produced on record ample material, consisting of affidavits and copies of the correspondence, either to the University or from the University. Both applications, undisputedly, are pending before the learned Assistant Charity Commissioner. The question of fact, regarding election of the trust in question and election of the members as well as office bearers of the trust, at present, is pending before the learned Assistant Charity Commissioner. We, therefore, refrain ourselves from referring this material in extenso and record any finding. The orders, which are likely to be passed by learned Assistant Charity Commissioner are subject to further proceedings under sections 70 and 72 of the said Act.

13. The orders purportedly passed by the learned Assistant Charity Commissioner under section 41A of the Act in routine have been challenged by filing writ petitions time and again before this Court. It is an usual phenomenon that two or more groups are claiming management of the registered public trust. The change reports, according to them, under section 22 of the said Act have been filed before the learned Assistant Charity Commissioner. Before disposal of change reports under section 22, learned Assistant Charity Commissioner gets the application purportedly under section 41A from one of the groups or sometimes from both the groups and instead of disposing and deciding the application under section 22 of the said Act, learned Assistant Charity Commissioner entertains an application purportedly under section 41A of the Act and orders are being passed.

14. According to the provision under section 22 of the said Act, change occurred has to be reported to the learned Assistant Charity Commissioner. The decision of the learned Assistant Charity Commissioner is not final in the matter and such orders are taken up in further proceedings either under section 70 or 72 of

the said Act and ultimately under Article/s 226/227 of the Constitution of India before this Court. It is, in this backdrop, the learned Assistant Charity Commissioner or the learned Charity Commissioner exercising powers under section 41A of the Act has to be careful while entertaining such an application. He should record a finding whether the application is entertainable under section 41A of the Act. It is in this circumstance, the learned Assistant Charity Commissioner should pass orders on such applications. The learned Assistant Charity Commissioner concerned shall decide and dispose of the change reports expeditiously, if necessary, by hearing the matters on day to day basis. Such final disposal of the change reports may help in proper administration of the trust in question, well as the trustees concerned.

15. As observed by us in the foregoing paragraphs, such directions under section 41A of the Act can be given to trustees. Unless such status being a trustee is available with the learned Assistant Charity Commissioner, he shall not entertain an application under section 41A of the Act and issue directions. All endeavour should be made for final disposal of the change reports or the applications filed under section 22 of the said Act.

24. In my view, the judgment in ***Dinkar Shankarrao Patil*** would have no application to the issue involved in the present Petition. The Division Bench in ***Dinkar Shankarrao Patil*** (supra) held that directions under the provisions of Section 41A of the MPT Act can only be given to a 'trustee' and unless such status as being a trustee is available with the learned Assistant Charity Commissioner, he cannot entertain an Application under Section 41A of the MPT Act for issuance of such directions. The above findings are recorded by the Division Bench in the peculiar facts of that case, where indirect route under Section 41A of the Act was sought for removal of the managing body of the Trust during pendency of the Change Report by which election of the managing body was sought to be reported. Thus instead of conducting a judicial enquiry under Section 22 relating to validity of election of trustees, their removal was sought in an administrative inquiry under Section 41-A. In case before the Division Bench, two Change Reports were pending before the Assistant

Charity Commissioner on behalf of Petitioner and Respondent Nos.1 and 2, both of them were claiming that general body meeting of the Trust had taken place and three persons were elected as managing committee members/office bearers of the Trust. It is in the light of these peculiar facts the Division Bench held that before disposal of Change Report under Section 22 of the MPT Act, the Assistant Charity Commissioner cannot direct that one of the rival groups would continue to function as managing body of the Trust by taking route under Section 41A of the MPT Act.

25. In my view, Sections 41A and 41D operate in different spheres. Under Section 41A of the MPT Act, the Charity Commissioner has power to issue directions for proper administration of the Trust. Section 41A provides thus:

41A. Power of Commissioner to issue directions 5 [for proper administration of the trust.—

(1) Subject to the provisions of this Act, the Charity Commissioner may from time to time issue directions to any trustee of a public trust or any person connected therewith, to ensure that the trust is properly administered, and the income thereof is properly accounted for or duly appropriated and applied to the objects and for the purposes of the trust; and the Charity Commissioner may also give directions to the trustees or such person that if he finds any property of the trust is in danger of being wasted, damaged, alienated or wrongfully sold, removed or disposed of :

Provided that, if any application is made by the trustee of any trust for seeking directions under sub-section (1), the Charity Commissioner shall decide such application within three months from the date of its receipt and if it is not practicable so to do, the Charity Commissioner shall record the reasons for the same.

(2) It shall be the duty of every trustee or of such person to comply with the directions issued under sub-section (1).

26. Thus, the power under Section 41A of the MPT Act can be exercised by the Charity Commissioner for the purpose of securing

proper administration of the Trust and the provision is essentially aimed at securing proper administration 'post' passing of the order. As against this, Section 41D of the MPT Act relates to the 'past' actions of the trustees entailing their suspension, removal or dismissal. The Division Bench in ***Dinakar Shankarrao Patil*** (supra) has essentially held that jurisdiction under Section 41A of the Act cannot be exercised by the Assistant Charity Commissioner for indirectly deciding the issue involved in the Change Report. In the present case, by exercising jurisdiction under Section 41D of the MPT Act for examining whether any of the persons claiming to be trustees are to be suspended, removed or dismissed by reason of any act committed by him or her, the Charity Commissioner does not directly or indirectly deal with any of the questions which is to be decided in enquiry, which is required to be conducted under Section 22 of the MPT Act. The action for suspension, removal or dismissal of the trustee under Section 41D of the MPT Act is an independent action having no connection with the enquiry to be conducted under Section 22 of the MPT Act.

27. In my view, therefore, there is no fetter on the power of the Charity Commissioner to entertain and decide Application for suspension, removal or dismissal of a trustee, whose Change Report is pending before the Deputy Charity Commissioner. The issue involved in the present petition is decided accordingly.

28. At the same time, it needs to be clarified that while deciding the Application under Section 41-D of the Act, the Charity Commissioner needs to ensure that by ordering suspension, removal or dismissal of a trustee, the disputes between two rival groups about validity of appointment of trustees are not indirectly determined. The

jurisdiction under Section 41-D is special one, and the inquiry would center around individual acts of a particular trustee entailing his/her suspension, removal or dismissal. During conduct of such special enquiry within the bounds of Section 41-D, the Charity Commissioner cannot usurp the jurisdiction under Section 22 by misusing the power under Section 41-D for ordering ouster of the entire governing body of the trust so as to ensure that the rival group takes over affairs of the Trust.

29. I therefore do not find any error in the order passed by the Charity Commissioner dismissing Application preferred by the Petitioner at Exhibit-106. Order dated 4 June 2024 passed by the learned Charity Commissioner is thus unexceptionable. Writ Petition is devoid of merits. It is accordingly, dismissed. It is however clarified that this Court has not determined merits of the application filed by Respondent No. 1 and 2 under Section 41-D of the Act and the Charity Commissioner shall proceed to decide the same independently on its own merits, without being influenced, in any manner, by any of the observations made in the judgment.

30. Rule is discharged. No orders as to costs.

[SANDEEP V. MARNE, J.]