

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

WRIT PETITION NO. 648 OF 2025

1. Subhash Pandurang Bandiwadekar
2. R.P. Bandiwadekar
3. Sanjay Mahadeo Patil
4. Dayanand Maruti Bhogan
5. Sou. Vidya Rajaram Bandiwadekar
6. Ashok Narsingrao Patil
7. Maruti Nana Pawar
8. Maruti Tukaram Gavade
9. Govind Prabhu Patil
10. Chandrabhaga Subrao Patil
11. Gopal Bharmu Bokade

...Petitioners

:Versus:

1. The State of Maharashtra through its
Principal Secretary, Law and Judiciary
Department.
2. Joint Charity Commissioner, Kolhapur.
3. Deputy Charity Commissioner, Kolhapur
Division, Kolhapur.
4. The Election Officer, Khedul Shikshan
Mandal, Kolhapur.

...Respondents

**WITH
INTERIM APPLICATION (Stamp) NO. 1523 OF 2025
(Application for Intervention)
IN
WRIT PETITION NO.648 OF 2025**

1. Rajaram Parshrma Patil
2. Laxman Dhondiba Lamble
3. Santu (Santaram) Shankar Patil
4. Vitthal Bhairoji Chandekar
5. Nagoji Kallu Patil
6. Gundu Somanna Patil
7. Balaram Baburao Patil
8. Mahadeo Bandu Patil
9. Ananda Vitthal Sutar

10. Shahu Moti Farnandis
11. Vaman Dattatray Sadekar
12. Ramana Bharamana Patil

In the matter between :-

...Applicants

1. Subhash Pandurang Bandiwadekar
2. R.P. Bandiwadekar
3. Sanjay Mahadeo Patil
4. Dayanand Maruti Bhogan
5. Sou. Vidya Rajaram Bandiwadekar
6. Ashok Narsingrao Patil
7. Maruti Nana Pawar
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Division, Kolhapur.
4. The Election Officer, Khedul Shikshan
Mandal, Kolhapur.

...Respondents

Mr. Vishwanath Talkute *i/b. Mr. Graham Francis, for the Petitioner.*

Mrs. Sulbha D. Chipade, *AGP for Respondent -State.*

Mr. S.S. Patwardhan *i/b. Mr. Abhijit M. Adagule for Intervener/Applicant in
IA/1523/2025.*

CORAM : SANDEEP V. MARNE, J.

Reserved on : 14 January 2025.

Pronounced on : 21 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.

THE CHALLENGE

2) Petitioners have filed this Petition challenging the order dated 10 January 2025 passed by the Election Officer nominated by the Deputy Charity Commissioner rejecting the objections raised by them to Preliminary Voters List published on 8 January 2025. Rejection of Petitioners' objections to the preliminary voters list has resulted in non-inclusion of their names in the Final Voters List published on 13 January 2025, which is also subject matter of challenge in the present Petition. Petitioners are thus, aggrieved by denial of opportunity to participate in the election process for election of Governing Council of Khedut Shikshan Mandal, Kalkundri, Taluka-Chandgad, District-Kolhapur.

FACTUAL MATRIX

3) Brief facts leading to filing of the present Petition are that Khedut Shikshan Mandal, Kalkundri (**Trust**) is a registered Public Charitable Trust established on 25 February 1956, which was initially registered as Society under the provisions of the Societies Registration Act, 1860. It got registered as a Trust under the provisions of Bombay Public Trusts Act, 1950 on 13 September 1963. The Trust apparently runs 7 High Schools, 3 Colleges and 1 Senior College in Chandgad, District-Kolhapur. The Trust is governed by Memorandum of Association, under which various kinds of members can be admitted to the Trust such as benefactors, barons, donors, fellows, ordinary members, life members and honorary members. All the members

together formed General Body of the Trust and the supervision, control and management of the Trust is vested in the Governing Council. The Governing Council is to be elected every three years. The Governing Council upto the year 1999 was duly elected with corresponding changes being accepted by the Assistant/Deputy Charity Commissioner in Schedule-I. However, the election to the Governing Council after the year 1999 ran into rough whether as the Change Reports reporting election of Governing Council during 1999-2000 to 2015-16 are not accepted by the Dy. Charity Commissioner, not because of any disputes within the members or persons interested but essentially because of non-following of the mandatory procedures required for holding elections. It appears that the Change Report in respect of the elections of the Governing Council for the year 1999-2000 to 2001-2002 was filed on 17 October 2002. During pendency of the said Change Report, further Change Reports were filed for the years 2002-03 to 2004-2005, 2005-06 to 2007-08, 2008-09 to 2010-11 and 2010- 2011 to 2013-2014. It appears that few additional Change Reports were also filed for reporting changes in the Governing Council due to death, resignation, etc. All the Change Reports were taken up for hearing by the Deputy Charity Commissioner and by various orders passed on 11 January 2017, the Deputy Charity Commissioner proceeded to reject all the Change Reports. The Change Reports relating to elections to the Governing Council in the year 1999-2000 to 2016-2017 were rejected *inter alia* holding that the occurred changes were not in accordance with law as the elections were found to have been conducted without following due procedure.

4) After rejection of the Change Reports in the manner aforesaid, one of the members Ravalnath Madkholkar filed an application under the provisions of Section 41A of the Maharashtra Public Trust Act **(the Act)** before the Deputy Charity Commissioner for appointment of *ad-hoc* committee of 7 persons for conducting day-to-day affairs of the Trust. During pendency of the said application, the said member withdrew the

prayer for appointment of *ad-hoc* committee and instead prayed for holding elections of the Trust. It appears that the said prayer was resisted by the rival group on account of existence of disputes about enrollment of members. The Deputy Charity Commissioner proceeded to pass order dated 1 March 2018 allowing the application under provisions Section 41A of the Act and directed holding of elections for appointment of Governing Council of the Trust. The Deputy Charity Commissioner however, directed that the members, who are enrolled after 16 May 1999 cannot be permitted to participate in the election process and directed conduct of elections through members who were enrolled upto 16 May 1999. The Deputy Charity Commissioner also noticed inability of 23 members (after exclusion of members enrolled after 16 May 1999) to elect Governing Council because of its peculiar composition and therefore directed filing of Scheme Application under Section 50-A for amendment of the Constitution before holding of elections.

5) Order passed by the Deputy Charity Commission on 1 March 2018 came to be challenged by the affected members, who were sought to be excluded from membership of the Trust by filing Writ Petition Nos.3382 of 2018, 3383 of 2018 in this Court. during pendency of those Petitions, Scheme Application was filed as directed by the Dy. Charity Commissioner, in which some of the excluded members filed intervention application under Section 73-A of the Act, which was rejected by Order dated 7 February 2019. Therefore, Writ Petition No. 4116 of 2019 was filed by excluded members challenging the Order dated 7 February 2019. All three petitions came to be disposed of by common judgment and order dated 10 May 2024 upholding the direction of the Deputy Charity Commissioner for holding of elections of the Trust. However, the observations of the Deputy Charity Commissioner about non-eligibility of the members enrolled after 16 May 1999 to participate in the election was set aside. The issue of their membership was kept open to be adjudicated in the appropriate proceedings.

Similarly, the direction for filing of Scheme Application under Section 50-A was also set aside.

6) Accordingly, the Election Officer nominated by the Deputy Charity Commissioner published election program for holding elections to elect Governing Council of the Trust for the year 2025 to 2027 on 7 January 2025. The Election Officer published preliminary list of voters on 8 January 2025. The names of the Petitioners were not included in the preliminary list of voters on the ground that they were enrolled as members after 16 May 1999. Petitioners therefore filed objections to the preliminary list of voters, which came to be rejected by Election Officer by order dated 10 January 2025. The petition is filed challenging the order dated 10 January 2025. During pendency of the petition, the Election Officer proceeded to finalise the voters list on 13 January 2025, which is also challenged by amending the petition.

SUBMISSIONS

7) Mr. Talkute, the learned counsel appearing for the Petitioners would submit that the Election Officer has overreached the order passed by this Court by once again denying right of participation to the members enrolled after 16 May 1999. He would submit that similar order passed by the Deputy Charity Commissioner on 1 March 2018 for exclusion of members enrolled after 16 May 1999 has been set aside by the Division Bench of this Court on 10 May 2024 and that therefore it was not open for the Election Officer to deny right of participation to such members. He would submit that the net effect of the impugned order passed by the Election Officer is restoration of order of the Deputy Charity Commissioner dated 1 March 2018 ignoring the position that the same has been set aside by the order of the Division Bench of this Court.

8) Mr. Talkute would further submit that the Election Officer does not have jurisdiction to decide the issue of membership of the Trust. While deciding objections to the preliminary voters list, Election Officer has essentially adjudicated the membership disputes by exceeding his jurisdiction. He would submit that despite rejection of the Change Reports, the membership of Petitioners continues to subsist and so long as Petitioners continue to remain members of the Trust, it was impermissible for the Election Officer to deny them right to participate in the elections. He would submit that 18 members of the Trust have been enrolled in a phase wise manner between 2000 to 2015 after following the due process and with approval of the General Body of the Trust. That their appointments have absolutely nothing to do with election of the Governing Council. That the Change Reports have not been rejected by holding that enrollment of the said members is unlawful. He would take me through the proceedings of various General Body Meetings of the Trust to demonstrate as to how all the 18 members have been duly enrolled in a staggered manner with the approval of the General Body and have absolutely no relation to elections to the Governing Council in respect of which the Change Reports have been rejected.

9) In support of his contention that the issue of membership is unrelated to enquiry conducted under Section 22 of the Act, Mr. Talkute would rely upon judgment of this Court in Laxman Baburao Avale and Others Versus. Surendra s/o Brijmohan Agarwal and Others¹. He would also rely upon judgment of this Court in Laxman Baburao Avale and Others Versus. Surendra s/o Brijmohan Agarwal and Others². Mr. Talkute would therefore submit that since membership of the 18 persons remains intact despite rejection of the Change Reports, denial of opportunity to participate in the elections would be contrary to the constitution of the Trust. He would therefore pray for setting aside the impugned decision of the Election Officer

¹ Second Appeal No.375 of 2015 decided on 17 August 2015. (Aurangabad Bench)

² First Appeal No.326 of 2017 decided on 8 September 2017. (Aurangabad Bench)

and for inclusion of names of the Petitioner and all the members enrolled after 16 May 1999 in the final voters list.

10) The petition is opposed by Mr. Patwardhan, the learned counsel appearing for the Intervenor, who have filed Interim Application (Stamp) No.1523 of 2025. He would submit that the 18 members enrolled post 16 May 1999 have direct linkage to the actions of the Governing Council, whose Change Reports have already been rejected. That therefore necessary consequence of rejection of Change Reports would be cancellation of membership of all the said 18 persons. He would submit that there is a direct connection between enquiry to be conducted under the provisions of Section 22 of the Act and enrollment of members. That the members ultimately form electorate for holding elections to the Governing Council and that therefore while conducting an enquiry under Section 22 of the Act, the Election Officer can also adjudicate validity of enrollment of new members. In support of his contention, he would rely upon judgment of this Court in Narendra Namdev Malik and Ors. Versus. Ananda Demji Chougale³ and Krishnarao Kanhaiya Naidu and others Versus. Jeevraj Bhairavlal Agrawal and others⁴.

11) Mr. Patwardhan would further submit that enrollment of the said 18 persons is effected by fabricating the records. He would rely upon paragraph 12 (3) of the Memorandum of Association of the Trust in support of his contention that only General Body of the Trust can admit new members. He would submit that except post facto approval for membership of 9 members shown in the Annual General Meeting of 26 September 2015, rest of the 9 members are shown to have been admitted merely by the Managing Committee/Governing Council whose election is not only rejected by the Deputy Charity Commissioner, but who had no authority to enroll any new member. In any case, he would dispute the contention of the

³ 2024(6) Bom. C.R. 251

⁴ 2010(2) Mh.L.J. 31

Petitioners about approval for enrollment of new members by the General Body Meeting of 26 September 2015. He would submit that all the members have been enrolled by those Managing Committees, whose Change Reports have already been rejected. That with rejection of their Change Reports, actions taken by members of the said Managing Committee/Governing Council relating to constitution of the Trust would automatically be rendered *ab initio void*. Mr. Patwardhan would submit that the Election Officer has merely decided the issue of right of participation in the election and has rightly excluded the 18 persons enrolled after 16 May 1999 from participating in the elections.

12) Mr. Patwardhan would further submit that interference by this in ongoing election process is otherwise not warranted considering the fact that various stages of the election program have progressed with passage of each day. In support, he would rely upon judgment of this Court in *Shivaji and Another Versus. Deputy Charity Commissioner and others*⁵. In support of his contention that lack of authority for Governing Council members on account of rejection of Change Report would have necessary impact on enrollment of new members, Mr. Patwardhan would rely upon judgment of this Court in *People's Education Society, Through-Anandraj Y.Ambedkar Versus. Dr. K Sudhakar Reddy and others*⁶.

13) Mr. Patwardhan would alternatively submit that an enquiry into validity of enrollment of the 18 members has already been conducted by the Deputy Charity Commissioner while deciding application preferred by the Petitioners for intervention under Section 73A of the Act in Scheme Application No.12/2018. He would accordingly take me through the order dated 7 February 2019 passed by the Deputy Charity Commissioner to bring home his point that the Petitioners could not prove that they are validly enrolled members of the Trust before the Deputy Charity Commissioner. He

⁵ 2023 SCC OnLine Bom 2437

⁶ 2024 SCC OnLine Bom 3586

would submit that the order dated 7 February 2019 has attained finality as this Court did not set aside the same while disposing of Writ Petition No. 4116 of 2019 by judgment dated 10 May 2024. He would therefore submit that if any party needs to be driven to further round of litigation under Section 22 of the Act, it should be the Petitioners as they can very well challenge the results of the elections by making one more attempt to prove their membership before the Deputy Charity Commissioner. Mr. Patwardhan would accordingly pray for dismissal of the petition.

14) I have also heard Ms. Chipade, the learned AGP for Respondent-State.

REASONS AND ANALYSIS

15) The broad issue that arises for consideration is the effect of rejection of change reports on the status of membership of persons who were enrolled by the committees upon non-acceptance of the change relating to constitution of those committees by the Deputy Charity Commissioner in an inquiry under Section 22 of the Act. Whether rejection of such change reports about election of the committees would automatically render the decision taken by those committees to enroll new members *ab initio void* ? Also arises for consideration is the issue whether the Election Officer, while deciding objections to voters list, can decide the issue of validity of enrollment of members and if the answer is in the negative, in which exact proceedings can that issue be adjudicated?

16) The issues arise in the light of rejection of Change Reports relating to election of successive Governing Council during the years 1999-2000 to 2016-2017, which apparently enrolled 18 new members as under :

S.NO.	Year	Members Enrolled
1.	2000	1
2.	2001	1
3.	2002	2
4.	2005	1
5.	2007	2
6.	2010	1
7.	2012	1
8.	2015	9
	<u>TOTAL</u>	18

17) However, when the Change Reports were filed for effecting entries into the Schedule-I relating to the successive changes which occurred in the names of members of Governing Council of the Trust during the period 1999-2000 to 2016-2017, all those Change Reports were rejected by the Deputy Charity Commissioner by orders passed on 11 January 2017. Thus, the appointments of council members made from time to time during 1999-2000 to 2015-2016 stood invalidated by rejection of Change Reports by order dated 11 January 2017. Since those council members have enrolled 18 persons as members of the Trust, the Election Officer has refused to include their names in the Voters List. The issue that therefore arises is whether the Election Officer is justified in denying an opportunity of participation in the election process to the 18 members enrolled after 16 May 1999 only on account of rejection of Change Reports relating to election of Governing Council for the period from 1999-2000 to 2016-2017.

18) Similar attempt was made by the Deputy Charity Commissioner while deciding proceedings under Section 41A of the Act. By order dated 1 March 2018, the Deputy Charity Commissioner held that members enrolled after expiry of period of valid Governing Council did not attain status of valid members and that therefore all the persons enrolled after 16 May 1999 were held to be invalid members. As a matter of fact, the remit of enquiry to be conducted under the provisions of Section 41A of the Act does not include power to decide validity of enrollment of members as the Charity Commissioner can only issue directions for proper

administration of the Trust. In fact, the application preferred by one of the members under Section 41A of the Act was for appointment of *ad-hoc* committee for managing day to day affairs of the Trust on account of rejection of Change Reports. During pendency of his application seeking appointment of *ad-hoc* committee, that member withdrew the prayer for appointment of *ad-hoc* Committee and instead prayed for conduct of elections of the Trust. In that view of the matter, the Deputy Charity Commissioner should have only directed conduct of election of the Trust in exercise of provisions under Section 41A of the Act. However, since the Deputy Charity Commissioner unnecessarily went into the issue of validity of membership of 18 persons enrolled after 16 May 1999, his order came to be set aside by the order of the Division Bench of this Court on 10 May 2024. The Division Bench upheld the direction of the Deputy Charity Commissioner dated 1 March 2018 to the limited extent of conduct of elections of the Trust. However, the findings recorded by him that only members enrolled prior to 16 May 1999 are eligible to participate in the elections came to be set aside and the issue of membership was kept open for being decided in appropriate proceedings. The operative portion of the judgment and order dated 10 May 2024 passed by the Division Bench is as under :

- 10] As a sequel to the aforesaid discussion, the following order is passed :-
- (i) The order dated 01/03/2018 passed by the learned Deputy Charity Commissioner, Kolhapur in Misc. Application No.171 of 2017 to the extent it directs elections of the Society to be conducted is upheld.
 - (ii) The observations as well as the finding that only those members enrolled prior to 16/05/1999 are eligible to participate in the said elections is set aside. The issue of membership is expressly kept open for being adjudicated in appropriate proceedings.
 - (iii) The Scheme proceedings initiated pursuant to the directions issued on 01/03/2018 would stand terminated as being non-est in law. Consequently, the order dated 25/07/2019 passed by the learned Deputy Charity Commissioner is set aside as the direction to initiate such proceedings issued on 01/03/2018 by the learned Deputy Charity Commissioner has been set aside. Trust Appeal No.43 of 2019 stands disposed of as infructuous. However, it is clarified that this judgment would not preclude exercise of jurisdiction under Section 50-A of the Act of 1950 in accordance with law.

19) Petitioners, who are enrolled members after 16 May 1999, contend that the judgment and order passed by the Division Bench on 10 May 2024 recognises their right to participate in the election process. It would be difficult to accept this extreme position that the Order of Division Bench upholds the right of participation in the elections by the Petitioners. This Court set aside observations of the Deputy Charity Commissioner in order dated 1 March 2018 about right of such members to participate in the elections only on account of absence of jurisdiction of Deputy Charity Commissioner to make those observations in an enquiry under Section 41A of the Act. The second reason why the said observations were set aside was about absence of opportunity of hearing to the concerned members. This would be clear from the following findings recorded by this Court:

7] Perusal of the impugned order dated 01/03/2018 indicates that after finding that a direction to hold elections for the proper administration of the Trust was warranted, which direction was acceptable to all parties, the learned Deputy Charity Commissioner undertook the exercise of examining the status of members on the premise that members enrolled after 16/05/1999 had no legal right whatsoever. It was held that only those members enrolled prior to that date could participate in the elections. This direction cannot be sustained for reasons more than one. As stated above, this exercise cannot be undertaken under Section 41-A so as to ensure proper administration of the Trust. It is linked to the rights claimed by individual members and would require adjudication after due opportunity to parties in exercise of powers conferred in that regard. Such exercise is beyond the scope of Section 41-A of the Act of 1950. Further, the members likely to be affected by a finding that those enrolled after 16/05/1999 had no legal right to participate in the elections ought to have been heard before such adjudication. It is not in dispute that members affected by such finding were not heard before the same was recorded. In a contest between the members claiming rival rights, this issue could have been considered. Reference in this regard can be made to the decision in Shahid Javed Maniyar and another vs. Sagir Munikhan Sarguroh (DR.) and others, 2014(5) Mh.L.J. 823 relied upon by the learned Counsel for the Petitioners where a somewhat similar direction restricting the members enrolled up to a particular date to participate had been set aside. Though the learned Deputy Charity Commissioner relied upon the decision in Maha Pragya Vidya Nidhi Foundation and Ors (supra), the directions issued therein were in the factual backdrop of orders passed in the preceding litigation. The said decision has been considered in Vanmala Manoharrao Kamdi (supra). It thus becomes clear that the finding recorded by the learned Deputy Charity Commissioner in the impugned order that members enrolled after 16/05/1999 had no legal

right whatsoever to participate in the elections is pursuant to an exercise undertaken beyond jurisdiction and thus liable to be set aside.

20) Therefore, merely because the observations of the Deputy Charity Commissioner with regard to right of members enrolled after 16 May 1999 to participate in the elections are set aside by this Court on the ground of lack of jurisdiction and violation of principles of natural justice, it cannot be contended that this Court has recognised their right to participate in the election process. In fact, the issue of validity of their membership has expressly been kept open by the Division Bench to be adjudicated in the appropriate proceedings.

21) The case presents a unique conundrum where fate of 18 members enrolled after 16 May 1999 by various Governing Councils is now being questioned on account of rejection of the Change Reports by which changes to the Governing Council occurring during 1999 to 2016 are not accepted vide orders dated 11 January 2017. Mr. Patwardhan has contended that with rejection of the Change Reports, membership of 18 persons would automatically come to an end. In support, he has relied upon judgment of Single Judge of this Court (*C. L. Pangarkar, J.*) in *Krishnarao Kanhaiya Naidu* (supra) in which, according to Mr. Patwardhan, similar argument of rejection of Change Report not invalidating actions by elected trustees is rejected by this Court. In para-12 of the judgment, it appears that this Court rejected the submission made on behalf of the Petitioner therein that rejection of the Change Report does not invalidate actions taken by the elected trustee. Para-12 of the judgment reads as under :

12. Shri Khapre learned counsel submits that even when a change report is rejected actions taken by elected trustees are valid. Submission cannot be accepted. Once the Charity Commissioner holds that an election itself is invalid, it can be said that such a person was never elected at all. Shri Khapre puts an analogy before the Court and says that where appointment of Judge is made and it is found subsequently to be invalid, the decisions rendered by him are held valid. He quotes a decision of the Supreme Court in *Gokaraju Rangaraju v. State of A.P.*, (1981) 3 SCC 132 : AIR 1981 SC 1473 (1). Decision has no bearing. Charity Commissioner is

required to see if legal change has occurred or not. Only when he says that such change has occurred such a person could be said to have assumed the office of the trust, till then he merely continues to be an elected trustee.

22) The observations in *Krishnarao Kanhaiya Naidu* appears to have been made in the light of unique facts of that case which is apparent from further findings in para-13 of the judgment, which read thus:

13. Shri Manohar learned counsel submits that all arguments of Shri Khapre about validity of the enrolment of new members can be negated for the simple reason that the Deputy Charity Commissioner in Enquiry No. 8 of 1991 has specifically held that such enrolment was invalid. This application was moved by Shri C.G. Choube and others. They have made a prayer that 78 members should be declared as legally enrolled. Therefore the material question that was being decided by the Deputy Charity Commissioner was about validity of the enrolment of new members. He held that new members in category of sympathiser were not properly enrolled. He held that these new members had paid Rs. 250/- in one lumpsum which was in breach of the scheme. Clause IV of the said scheme is already quoted above. If the clause is read it would be clear that a person becomes sympathiser member only when he pays 50th instalment of Rs. 5/-. Anybody paying Rs. 250/- in lumpsum cannot be enrolled in category of sympathiser. He at the most may become an ordinary member. **This finding of the Charity Commissioner appears to me to be correct.** Shri Khapre learned counsel submits that this decision is a void decision as according to him the Charity Commissioner has no right to decide the issue of membership. Decision has been rendered by a Charity Commissioner and it is not challenged or set aside. It cannot be said to be an order which is non est and one without jurisdiction. Charity Commissioner in fact has a power to decide the question of validity enrolment of members since the question would always be whether the office bearers are elected by a valid electorate. If the persons who are not validly included in electoral roll elect then election by those persons would be invalid. Therefore the Charity Commissioner would certainly have a right to go into the question of validity of electoral roll if called upon to decide the same. Charity Commissioner has always an overall control over any trust. Therefore such an act on part of the Deputy Charity Commissioner to my mind was not one without jurisdiction. At the most it could be said that the Charity Commissioner may have committed an error of law. An error of law does not render any order invalid. Authorities below have rightly held that the enrolment was improper and therefore the election was improper.

(emphasis and underlining supplied)

23) Thus, in *Krishnarao Kanhaiya Naidu*, an enquiry was conducted by the Deputy Charity Commissioner into the validity of enrollment of new members. The decision of the Deputy Charity Commissioner declaring enrollment to be invalid was sought to be questioned on the ground of lack

of jurisdiction of Deputy Charity Commissioner to decide the issue of membership. This Court did not accept the submission and held that the Deputy Charity Commissioner has jurisdiction and power to decide the question of validity of enrollment of members, since the question would always be whether the office bearers are elected by a valid electorate. In my view, therefore the judgment in *Krishnarao Kanhaiya Naidu* cannot be relied upon in support of an absolute proposition that every action taken by the elected members, Change Reports relating to whose election get rejected, would be invalidated only on account of such rejection. Such proposition would lead to unimaginable consequences where actions relating to appointment of teachers, promotions, etc. on the establishments of schools and colleges would be rendered invalid merely because the Charity Commissioner subsequently comes to a conclusion that the election of the committee members is found to be erroneous, leading to rejection of Change Reports.

24) In fact, going by the ratio of the judgment in *Krishnarao Kanhaiya Naidu*, it would be apposite to hold that the effect of rejection of Change Report on validity of enrollment of new members would depend on the fact whether an enquiry is conducted by the Charity Commissioner into the issue of validity of enrollment while deciding the Change Report. In a case where the Deputy Charity Commissioner has conducted such an enquiry about validity of enrollment of new members under Section 22 of the Act and has ruled that some of the members are invalidly enrolled, it cannot then be contended that mere rejection of the Change Report would not invalidate enrollment of such members. If, on the other hand, during the course of enquiry into the change under Section 22 of the Act, the Assistant or Deputy Charity Commissioner had no occasion to go into the issue of enrollment of new members and the same issue is not at all decided in such an enquiry, it cannot be said that rejection of Change Report would automatically invalidate enrollment of new members.

25) Therefore, though I am in full agreement with submissions canvassed by Mr. Patwardhan that enquiry into validity of membership can be conducted while deciding the Change Report under Section 22 of the Act, I am of the view that the effect of rejection of Change Report on validity of enrollment of new members would depend on the fact as to whether Section 22 enquiry covered the issue of validity of enrollment. The principle of jurisdiction of Charity Commissioner to decide the issue of membership while conducting enquiry under Section 22 of the Act will have to be necessarily upheld as the Charity Commissioner, during the course of judicial enquiry for ascertaining as to whether a change has occurred or not, is also required to necessarily ascertain whether the election has been validly conducted or not. While deciding the issue of validity of the election, one of the vital issues that arises for consideration is whether the eligible persons have voted in the elections and therefore the issue of validity of membership of newly enrolled members is bound to be decided in an enquiry under Section 22. I am therefore in full agreement with the view expressed in the judgment of this Court in *Krishnarao Kanhaiya Naidu* about jurisdiction of the Deputy Charity Commissioner to decide the issue of membership during the course of conduct of enquiry under Section 22 of the Act. The ratio of the judgment in *Krishnarao Kanhaiya Naidu* has been followed by another Single Judge of this Court (*N. J. Jamadar, J.*) in *Narendra Namdev Mulik* (supra) in which it is held in paras-26, 27 and 29 as under:

26. Mr. Bhavake criticized the aforesaid approach of learned Joint Charity Commissioner. It was submitted that the legality of the membership of the petitioner Nos. 1 to 11 was not within the remit of inquiry envisaged by section 22 of the Trust Act, 1950. The issue of legality of the membership was never agitated by respondent Nos. 1 to 8 and adjudicated by the competent authority. Therefore, the said issue could not have been inquired into by the authorities under Trust Act, 1950, especially in the proceedings under section 22 of the Trust Act, 1950.

27. I find it rather difficult to accede to the aforesaid broad submission sought to be canvassed by Mr. Bhavake, especially in the facts of the case at hand. As noted above, one year's membership of the trust is the qualification to be an elector for, and also get elected to, the managing committee. The petitioner Nos. 1 to 11 were allegedly inducted as the

members of the trust on 13th July, 2008 and, exactly one year thereafter on 14th July, 2009, the petitioner Nos. 1 to 11 were allegedly elected as members of the managing committee and none from the original 23 members was elected. Almost instantaneous election of the petitioners no sooner than they acquired the membership qualification is a matter which is required to be appreciated in the light of concomitant circumstances.

28. The factors adverted to by the Joint Charity Commissioner (referred to in paragraph No. 25 above) are relevant and germane for the determination of the controversy. The reporting trustee in an affidavit in lieu of examination in chief filed on 20th June, 2011 could not have affirmed that there were only 23 members of the trust, when the petitioner Nos. 1 to 11 were allegedly inducted as members of the trust in the year 2008. Clause-6(b) of the Constitution provides that to become a member of the trust a person was required to give an application. Apart from an extract of membership register, no documents were placed before the authorities under the Trust Act, 1950 to substantiate the claim that the petitioner Nos. 1 to 11 had made such application to become members of the trust and they were so admitted as the members of the trust in the AGBM allegedly held on 13th July, 2008. To add to this, Mr. Mulik, petitioner No. 1 conceded in the cross examination that in Change Report No. 269 of 2008, there is an endorsement that the original membership register was verified on 12th October, 2010, and the names of the petitioners No. 1 to 11 were not included therein as members of the trust. Cumulatively, all these factors erode the claim of the petitioner Nos. 1 to 11 that they were inducted as members of the trust, a year prior to the alleged meeting held on 14th July, 2009.

26) Thus it is permissible to decide the issue of validity of enrollment of member in an inquiry under Section 22 of the Act. Reliance by Mr. Talkute on judgment of this Court in *Laxman Baburao Avale* (supra) in support of his contention that such issue cannot be decided in Section 22 proceedings is inapposite, where the issue for consideration was entirely different. This Court has decided the issue as to whether independent issue of validity of membership can be decided in inquiry under Section 22 of the Act when the change report is not contested. This is clear from the following observations by this Court:

4. Looking to the limited controversy between the parties, a very short question arises for my consideration, i.e. **Whether an independent issue of validity of the membership of any person can be decided in an enquiry under section 22 of the Maharashtra Public Trust Act, when the validity and legality of the occurrence of change report is not in dispute.** My finding thereon is in the negative for the reasons to follow:

XXXX

8. Considering the rival submissions of both the sides, it appears that when the question of jurisdiction of Deputy Charity Commissioner or Joint Charity Commissioner is raised regarding issue of Membership and its validity, when the validity and legality of change occurred is not disputed by anybody, then we have to see the scope of the provisions of section 22 of the Act. **Undisputedly, the Charity Commissar has jurisdiction to decide the validity of the membership because the question would be always there whether the office bearers who assume the office of trusteeship were elected by the valid members or not. For that purpose, the Joint Charity Commissioner has certainly jurisdiction to decide the validity of the members.** However, Deputy Charity Commissioner or the Joint Charity Commissioner has got such jurisdiction only when the occurrence of change or the election of the office bearers itself is challenged by the interested person on the ground of illegal electorate and not when the election is not challenged by any body.

Thus even in *Laxman Baburao Avale*, this Court has reiterated the principle that issue of validity of membership can always be decided in inquiry under Section 22 of the Act. However, what Mr. Talkute possibly highlights by relying on the judgment in *Laxman Baburao Avale* is that there was no contest to the change reports in the present case and that therefore rejection of change reports cannot be construed to mean decision of issue of membership by the Deputy Charity Commissioner. To this limited extent, what Mr. Talkute contends is possibly correct.

27) Thus as observed above, rejection of change report relating to election of council members would not *ipso facto* lead to a presumption that inquiry has covered the issue of validity of enrollment of new members. It may happen that in a given case, there is no occasion for the Deputy Charity Commissioner to decide the issue of valid electorate and enrollment of new members. It is only in a case where Section 22 inquiry covers the issue of validity of enrollment that rejection of change report would entail rejection of their membership as well.

28) Mr. Patwardhan has relied upon judgment of this Court in *People's Education Society* (supra), in which the challenge essentially was to the order passed by Mumbai University and College Tribunal setting aside order of compulsory retirement of Respondent No.1 therein. While deciding the said challenge, the Management raised an issue that the order of

Tribunal proceeded on assumption of valid appointment of Mr. Anantraj Y. Ambedkar as Chairman of the Trust. A Single Judge of this Court (*Madhav J. Jamdar, J.*) relied upon judgment of another learned Single Judge of this Court (*His Lordship Justice A. M. Khanwilkar, as he then was*) in **Chembur Trombay Education Society and others Versus. D.K. Marathe and others**⁷ and held in para 19 as under :

19. If the facts of this case are examined on the touchstone of the above legal position, then, admittedly, the governing body members namely Mr. V.M. Pradhan, Dr. D.G. Deshkar, Dr. M.P. Mangudkar and Professor Mr. S.L. Bhagwat, who inducted Mr. Anandraj Ambedkar as member of the Governing Body and as Chairman on 29.06.2012 cannot be deemed to be the members of the Governing Body on 29.06.2012, as the Change Report concerning them have been rejected on 10.09.2012 and the said Orders have been upheld in the Appeal. Although in the Second Appeal (L) No. 25487 of 2023, challenge to those Orders is pending, as pointed out by learned Counsel for the Respondents the said Orders have not been yet stayed. Thus, the effect of rejection of Change Report concerning inclusion of said members namely Mr. V.M. Pradhan, Dr. D.G. Deshkar, Dr. M.P. Mangudkar and Professor Mr. S.L. Bhagwat as the members of the Governing Body of the Petitioner-Trust is that the date on which they inducted Mr. Anandraj Ambedkar as member of the Governing Body and as Chairman, they were not the members of the Governing Body. Therefore, they have no authority to induct Mr. Anandraj Ambedkar as member of the Governing Body and select him as Chairman. Thus, it cannot be said that Mr. Anandraj Ambedkar is validly and legally appointed as member of the Governing Body of the Petitioner-Trust and validly and legally selected as the Chairman of the Petitioner-Trust. Thus, it is clear that actions taken by said Mr. Anandraj Ambedkar are without any authority of law. These conclusions are inevitable in view of the scheme of the M.P.T. Act read with M.P.T. Rules concerning change which has happened in the entries in the register kept under Section 17 and in terms of law laid down by the learned Single Judge in *Chembur Trombay Education Society* (Supra), as the effect of non-acceptance of the Change Reports is that change will have to be undone and status-quo ante will have to be restored.

29) By recording the above findings, this Court approved the conclusion of the Tribunal that Mr. Anantraj Y. Ambedkar did not have authority to take decision of compulsory retirement of the employee therein as Change Reports relating to his appointment were rejected. In my view, the judgment in *People's Education Society* rendered while deciding the issue validity of punishment of compulsory retirement of a teacher, cannot be

⁷ 2001 SCC OnLine Bom 842

relied upon in support of an absolute proposition that membership of enrolled persons by successive Governing Councils would automatically come to an end only on account of non-acceptance of Change Reports, where the issue of validity of membership was not even involved.

30) It must be borne in mind that in the present case, the Trust runs several schools and colleges and the Governing Councils took several decisions for appointments, promotions, etc. of teaching and non-teaching staff. Therefore, if the proposition that every decision of Governing Council would be rendered invalid on account of rejection of Change Reports is accepted in the present case, the same would seriously jeopardise the fate of teaching and non-teaching staffs appointed by the Trust during past 25 long years.

31) Having held that it is lawful for the Deputy Charity Commissioner to decide the issue of validity of enrollment of members while conducting enquiry under Section 22 of the Act, it would now be necessary to examine whether such an enquiry into the validity of enrollment of new members has indeed been conducted by the Deputy Charity Commissioner while rejecting the Change Reports by orders dated 11 January 2017.

32) The first Change Report was for reporting the change in the Governing Council for the period 1999-2000 to 2001-2002 based on General Body Meeting held on 16 May 1999. The said Change Report No.981/1999 has been rejected by the Deputy Charity Commissioner by order dated 11 January 2017 by recording following reasons:

03. In this context, it is necessary to place category wise member list. However in the present case member list does not specify the members from which category are belongs. They filed list of 81 members. Furthermore according to the constitution annual general body meeting, wherein election of governing council is to be made, notice of it be served to the

members. After going through the record on behalf of trust the copy of outward register is placed which indicates that notice of annual general meeting was to some members by post and some are served by hand. However there is no evidence is forthcoming pertaining to the acknowledgement of person to whom notices served by hand. There is only general statement that notices are served by hand without proof. Furthermore no evidence is forthcoming who posted the notices, whether they are served to the members etc. mere placing endorsement in the outward register is not sufficient to conclude that notices were served to the members of the trust so there is no proper service to the members of the trust. After going through the minutes of meeting, the annual general meeting elected governing council consists of 14 members however does not indicates which members belongs to which category. Likewise benefactors and Patrons members are only eligible to elect their category seats only, that factum is also not forthcoming in minutes of meeting. Thus occurred change is not in accordance with the law, consequently election of executive committee for the tenure 2001 to 2002 which is claimed in change report is not legally effected. Consequently change report stands rejected.

33) As a matter of fact, no new member was enrolled as on 20 September 1999 when Change Report No.981/1999 was filed. Therefore, no newly enrolled member had participated in election of the Governing Council for the period from 1999-2000 to 2001-2002. Therefore, there was no occasion for the Deputy Charity Commissioner to decide the issue of validity of enrollment of any new member while deciding Change Report No.981/1999.

34) The next Change Report No. 1475/2002 was filed for reporting change in the Governing Council for the period 2002-03 to 2004-05 based on Resolution of the General Body Meeting held on 18 August 2002 by which time General Body Resolution was adopted for electing new Governing Council for the period from 2002-03 to 2004-05, during which period 4 members were apparently enrolled. The exact details of the appointment of the said four members are not readily available, but it appears that two out of the said four members, Vidya Rajaram Bandiwadekar and Chandrabhaga Subrao Patil were enrolled as members in the meeting of the Managing Committee held on 7 July 2002. However, while rejecting the Change Report No. 1475/2002 it appears that the Deputy Charity Commissioner did not go into the issue of validity of enrollment of said 2 members. The reasons for

rejection of Change Report No.1475/2002 by order dated 11 January 2017 is as under :

02. It is settled law that the inquiry under Section 22 of Maharashtra Public Trusts Act, 1950 is judicial inquiry and is not formal inquiry only to record changes in the schedule. The enquiry Officer in fact is under the obligation to examine whether the members of the executive committee whose names are to be recorded are validly elected or not which includes examination of validity or posted the notices, whether they are served to the members etc mere placing endorsement in the outward register is not sufficient to conclude that notices were served to the members of the trust. Furthermore when member list consists of 91 members is placed on record, then mere endorsement the notice was send by post to 48 members is not sufficient to conclude that it is send to all members. So there is no proper service to the members of the trust. After going through the minutes of meeting the annual general meeting elected governing council consists of 14 members however does not indicates which elected member belongs to which category. Likewise benefactor and Patron members are only eligible to elect their category seats only. Then election made by them separately is not forthcoming in the minutes of meeting. Thus occurred change is not in accordance with the law, consequently election of executive committee for the tenure 2002-2003 to 2004-2005 which is claimed in change report is not legally effected. Consequently change report stands rejected.

35) Thus, Change Report No.1475/2002 was essentially rejected on account of failure to serve proper notice on all members of the Trust. The election is not invalidated on account of newly enrolled members participating in the election or the Deputy Charity Commissioner arriving at the conclusion that the enrollment of the said new members is invalid.

36) The next Change Report No. 1419/2005 was for reporting change in the Governing Council for the period 2005-06 to 2007-08 based on General Body Resolution dated 4 August 2005. By this time, one more member was enrolled. However, while rejecting the Change Report No. 1419/2005, the Deputy Charity Commissioner again did not go into the issue of validity of enrollment of new members. The reasons for rejection of Change Report No. 1419/2005 are as under:

03. So in this context it is necessary to place category wise member list. However in the present case no member list is placed on record. Furthermore according to the constitution annual general body meeting wherein election of governing council is to be made be served to the

members. After going through the record on behalf of trust the copy of outward register is placed which indicates that notice of annual general meeting was served to some members by post and some by hand delivery. However there is no evidence is forthcoming if the notices are served by hand then acknowledgement of that members. Furthermore no evidence is forthcoming who posted the notices, whether they are served to the members etc mere placing endorsement in the outward register is not sufficient to conclude that notices were served to the members of the trust so there is no proper service to the members of the trust. After going through the minutes of meeting the annual general meeting elected governing council consists of 14 members. However does not indicates which members belongs to which category. Likewise benefactors and Patrons members are only, then election made by them separately is not forthcoming in minutes of meeting. Thus occurred change is not in accordance with the law, consequently election of executive committee for the tenure 2005 to 2008 which is claimed in change report is not legally effected. Consequently change report stands rejected.

37) The next Change Report No. 1379/2008 was for reporting change in the Governing Council for 2008-09 to 2010-11 based on General Body Meeting of 10 August 2008 by which time two new members were enrolled. However, while rejecting Change Report No.1379/2008, the Deputy Charity Commissioner again did not go into the issue of validity of enrollment of new members. The reasons recorded for rejection of this Change Report are as under:

03. So in this context it is necessary to place category wise member list. However in the present case no member list is placed on record. Furthermore according to the constitution annual general body meeting wherein election of governing council is to be made be served to the members. After going through the record on behalf of trust the copy of outward register is placed which indicates that notice of annual general meeting was served to some members by post and some by hand delivery. However there is no evidence is forthcoming if the notices are served by hand then acknowledgement of that members. Furthermore no evidence is forthcoming who posted the notices, whether they are served to the members etc mere placing endorsement in the outward register is not sufficient to conclude that notices were served to the members of the trust so there is no proper service to the members of the trust. After going through the minutes of meeting the annual general meeting elected governing council consists of 14 members. However does not indicates which members belongs to which category. Likewise benefactors and Patrons members are only, then election made by them separately is not forthcoming in minutes of meeting. Thus occurred change is not in accordance with the law, consequently election of executive committee for the tenure 2008 to 2011 which is claimed in change report is not legally effected. Consequently change report stands rejected.

38) The next Change Report No.3142 of 2011 was for reporting change in the Governing Council for the period 2010-11 to 2013-14 based on General Body Meeting dated 13 August 2011, by which time, one more new member was enrolled to the Trust. The Change Report is rejected by recording that all the previous Change Reports were already rejected and by holding as under:

03. So in this context it is necessary to place category wise member list. However in the present case no member list is placed on record. Furthermore according to the constitution annual general body meeting wherein election of governing council is to be made be served to the members. After going through the record on behalf of trust the copy of outward register is placed which indicates that notice of annual general meeting was served to some members by post and some by hand delivery. No evidence is forthcoming who posted the notices, whether they are served to those members etc mere placing endorsement in the outward register is not sufficient to conclude that notices were served to the members of the trust so there is no proper service to the members of the trust.

04. Furthermore the change reports of trust are rejected from the tenure 1999. The member list which is placed on record does not indicates the members were when and in which year inducted. If members are inducted after 1999 then they are invalid member of trust as it is settled that only valid executive body is empowered to enrol new members. In the present case there is no valid executive body from the year 1999. After going through the minutes of meeting the annual general meeting elected governing council consists of 14 members. However does not indicates which members belongs to which category. Likewise benefactors and Patrons members are only, then election made by them separately is not forthcoming in the minutes of meeting. Thus occurred change is not in accordance with the law, consequently election of executive committee for the tenure 2011 to 2014 which is claimed in change report is not legally effected. Consequently change report stands rejected.

39) The last Change Report No. 80/2014 was for reporting change in the Government Council for the period 2014-15 to 2016-17 based on General Body Resolution dated 13 August 2014 by which time, no new member was enrolled to the Trust. The Change Report No. 80/2014 was rejected by recording following reasons :

03. So in this context it is necessary to place category wise member list. However in the present case no member list is placed on record. Furthermore according to the constitution annual general body meeting

wherein election of governing council is to be made be served to the members. After going through the record on behalf of trust the copy of outward register is placed which indicates that notice of annual general meeting was served to some members by post and some by hand delivery. However there is no evidence is forthcoming if the notices are served by hand then acknowledgement of that members. Furthermore no evidence is forthcoming who posted the notices, whether they are served to the members etc mere placing endorsement in the outward register is not sufficient to conclude that notices were served to the members of the trust so there is no proper service to the members of the trust. After going through the minutes of meeting the annual general meeting elected governing council consists of 14 members. However does not indicates which members belongs to which category. Likewise benefactors and Patrons members are only, then election made by them separately is not forthcoming in the minutes of meeting. Thus occurred change is not in accordance with the law, consequently election of executive committee for the tenure 2014 to 2017 which is claimed in change report is not legally effected. Consequently change report stands rejected.

40) Thus, none of the Change Reports are rejected by conducting any enquiry into the issue of validity of enrollment of new members. The Deputy Charity Commissioner had no occasion to conduct an enquiry into the aspect as to whether new members were validly enrolled or not. Therefore, the ratio laid down by this Court in *Krishnarao Kanhaiya Naidu* cannot be applied to the facts of the present case. Since the change reports were not even contested, the Deputy Charity Commissioner could not have even decided the issue of validity of membership as held by this Court in *Laxman Baburao Avale*.

41) Faced with a situation that rejection of Change Reports did not involve inquiry into the aspect of validity of enrollment of new members, Mr. Patwardhan would rely upon order dated 7 February 2019 passed by the Deputy Charity Commissioner in Intervention Application preferred by some of incoming members. According to Mr. Patwardhan, the Deputy Charity Commissioner has conducted in depth inquiry into the issue of validity of enrollment of new members and has held in order dated 7 February 2019 that the new members could not produce sufficient evidence to prove that they are validly enrolled. To consider the submission of Mr. Patwardhan about Deputy Charity Commissioner conducting enquiry into

the issue of enrollment of new members in order dated 7 February 2019, it would be necessary to examine the background in which the said order has been passed. It appears that when application under Section 41A of the Act was filed before the Deputy Charity Commissioner for appointment of *ad hoc* committee, which prayer was subsequently modified to prayer for conduct of elections, the Deputy Charity Commissioner proceeded to allow the prayer for holding of elections. However, the Applicant before the Deputy Charity Commissioner, who belongs to group of intervenors in the present petition, presented a difficulty before the Deputy Charity Commissioner that after deletion of 18 members, there was non-availability of sufficient members for electing the Governing Council of the Trust. The difficulty was expressed as the Memorandum of Association provides for 2 seats each to benefactors, patrons, donors and fellows and 4 seats to ordinary members. It appears that sufficient members in each category were not available for the purpose of electing a valid Governing Council. This is a reason why difficulty was expressed by the intervenors for conduct of elections based on remaining members after deleting the names of 18 members. To surmount the difficulty, the Deputy Charity Commissioner directed the intervenors to file a Scheme Application under provisions of Section 50A(3) of the Act for amendment of the Constitution so as to change the composition of representation of different category of members in the Governing Council. The elections were directed to be held after such amendment to the Constitution.

42) It appears that in pursuance of directions issued by the Deputy Charity Commissioner for filing Scheme Application under Section 50A(3), the intervenors filed Scheme Application No. 12/2018 for amendment of Constitution of the Trust. Ten newly enrolled members filed intervention application under Section 73A of the Act. Order dated 7 February 2019 was passed by the Deputy Charity Commissioner by rejecting the application of the said 10 members for intervention. While rejecting the applications, the

Deputy Charity Commissioner has made certain *prima facie* observations about inability of the members to indicate the exact category to which they belong. It is further held that no evidence was produced about payment of membership fees. It was further held that rejection of Change Reports was not challenged by them. The Deputy Charity Commissioner therefore held that presence of the said 10 members for adjudication of Scheme Application was unnecessary.

43) I am unable to read order dated 7 February 2019 passed by the Deputy Charity Commissioner to mean adjudication of issue of validity of enrollment of 18 members. Firstly, while deciding intervention application, it was not necessary for the Deputy Charity Commissioner to undertake an in depth enquiry into the issue of membership. The limited remit of enquiry before the Deputy Charity Commissioner while deciding intervention application was whether the 10 members were necessary or proper parties to Scheme Application and whether such Scheme Application could be decided in their absence. Secondly, what is recorded by the Deputy Charity Commissioner in order dated 7 February 2019 are merely *prima facie* findings seeking to cast few doubts about valid membership of the said 10 members. The findings cannot be read to mean final adjudication of issue of membership of the said 10 members. There is yet another reason why the order dated 7 February 2019 cannot be used in support of contention that adjudication of issue of membership. Order dated 7 February 2019 was subject matter of challenge before the Division Bench in Writ Petition No. 4116 of 2019. While deciding the validity of order dated 1 March 2018 passed by the Deputy Charity Commissioner on application under Section 41A of the Act, the Division Bench arrived at a finding that the Deputy Charity Commissioner could not have directed exclusion of members enrolled after 16 May 1999. Since the conundrum relating to conduct of election through only 23 members (after excluding 18 members) got created only on account of deletion of names of new members, this Court also

decided the issue as to whether direction issued by the Deputy Charity Commissioner for filing of Scheme Application under Section 50A of the Act was valid. This Court held in paragraphs 8 and 9 as under :

8] Insofar as the other direction issued based on the proceedings under Section 50-A of the Act of 1950 is concerned, it is seen that it was found by the learned Deputy Charity Commissioner that from amongst existing members, the Executive Committee could not be elected. This was for the reason that the requisite number of members were not available. On that basis it was observed that the bye-laws of the Public Trust be treated as a Scheme under Section 50-A of the Act of 1950. A further direction was issued to seek amendment of the Scheme and based on such adjudication the elections were directed be conducted. It may be noted that when the application under Section 41-A of the Act of 1950 was filed on 23/08/2017 it was only the Charity Commissioner who could exercise power under Section 50-A of the Act of 1950. When proceedings under Section 41-A of the Act of 1950 were pending, Section 50-A came to be amended by Maharashtra Act No.LV of 2017, that came into effect from 10/10/2017. By such amendment this power was conferred on the Assistant or Deputy Charity Commissioner. Thus, on the date when the proceedings were decided on 01/03/2018 the Deputy Charity Commissioner was empowered to exercise jurisdiction under Section 50-A of the Act of 1950. To that extent, the exercise of jurisdiction in that regard cannot be faulted.

It is however to be noted that the direction issued in exercise of jurisdiction under Section 50-A is based on the premise that there were only twenty three members in the Trust. This is after recording a finding that the ten members enrolled on 16/05/1999 were valid members. As held above, the issue with regard to legality of membership could not have been gone into under Section 41-A of the Act of 1950. Hence, the basis for the learned Deputy Charity Commissioner to hold that there were only twenty three members of the Trust and thus the necessity to amend the bye-laws is without jurisdiction. According to the Petitioners, about eighteen members were enrolled after 16/05/1999 besides the twenty three members enrolled before 16/05/1999. This aspect is disputed by the respondents. This issue was required to be resolved in appropriate proceedings but definitely not in exercise of jurisdiction under Section 41-A of the Act of 1950. Since it has been found that the only reason for issuing directions under Section 50-A(3) of the Act of 1950 is the finding that there were only twenty three valid members, the direction to seek amendment of the bye-laws of the Trust is not sustainable. This direction having been issued on an incorrect legal and factual premise, the same is liable to be set aside. Consequently, the proceedings initiated in view of the order dated 01/03/2018 would not survive. However, jurisdiction under Section 50-A can be exercised if the situation so requires in the future.

9] Insofar as challenge to the order passed under Section 73-A of the Act of 1950 dated 07/02/2019 raised in Writ Petition No.4116 of 2019 is concerned, the same would now not survive since the direction to initiate proceedings under Section 50-A has been set aside as being one being issued contrary to law. The challenge to the order dated 07/02/2019 is thus rendered infructuous.

44) In operative paragraph 10(iii) of the judgment, this Court directed termination of Scheme Application No. 12/2018 as under :

(iii) The Scheme proceedings initiated pursuant to the directions issued on 01/03/2018 would stand terminated as being non-est in law. Consequently, the order dated 25/07/2019 passed by the learned Deputy Charity Commissioner is set aside as the direction to initiate such proceedings issued on 01/03/2018 by the learned Deputy Charity Commissioner has been set aside. Trust Appeal No.43 of 2019 stands disposed of as infructuous. However, it is clarified that this judgment would not preclude exercise of jurisdiction under Section 50-A of the Act of 1950 in accordance with law.

45) Thus, Scheme Application No. 12/2018 itself has been terminated by reason of judgment of Division Bench dated 10 May 2024 and therefore any observations made by the Deputy Charity Commissioner while deciding interlocutory application filed in such Scheme Application cannot be relied upon in support of contention that there is any adjudication of issue of validity of enrollment of members after 16 May 1999.

46) I therefore hold that though enquiry into the validity of enrollment of members can be conducted by Assistant/Deputy Charity Commissioner while deciding Change Report under Section 22 of the Act, mere rejection of the Change Report would not automatically entail termination of membership of newly enrolled members unless the Assistant/Deputy Charity Commissioner in an enquiry under Section 22 holds that they were not validly enrolled. To paraphrase, loss of membership to a Trust would result only on the basis of finding to that effect recorded by Assistant/Deputy Charity Commissioner in enquiry conducted under Section 22 and mere rejection of a Change Report relating to change in Governing Council, in absence of any enquiry into the validity of enrollment of new members, would not entail automatic termination of their membership.

47) Mr. Patwardhan has sought to cast aspersions on the manner in which new members are enrolled in the General Body Meeting of 26 September 2015. Mr. Talkute has placed on record Minutes of the General Body Meeting held on 26 September 2015 in which Resolution No.11 is adopted for grant of post-facto approval to enrollment of 9 new members. It appears that the Governing Council in its meeting of 29 December 2014 and 28 May 2015 had enrolled $6 + 3 = 9$ new members and the General Body of the Trust resolved to grant post-facto approval to enrollment of the said 9 members. Mr. Patwardhan would seek to question the authenticity of Resolution No.11 shown to have been adopted in the General Body Meeting on 26 September 2015 by inviting my attention to the agenda of General Body Meeting published vide Notice dated 7 September 2015. He would contend that the agenda for grant of post-facto approval to enrollment of 9 new members were never circulated and that there is nothing to indicate that the additional subject was taken with the approval of the Chairman. In my view, what is sought to be raised by Mr. Patwardhan is merely a surmise on the basis of which it is difficult to record a conclusive finding at this stage that there is anything erroneous in enrollment of the said 9 new members through the two Governing Council Meetings held on 29 December 2014 and 28 May 2015 to which *prima-facie* approval is granted in the General Body Meeting held on 26 September 2015. Mr. Talkute has placed on record the Minutes of the Governing Council Meeting held on 29 December 2014 by which 6 new members were enrolled. In any case, if Mr. Patwardhan's clients desire to question the validity of enrollment of the said 9 new members, they will have to question the same in appropriate proceedings which issue is being discussed separately in the later part of the judgment.

48) Since this Court showed disinclination to uphold the objection about enrollment of 9 members in general body meeting of 26 September 2015 read with managing committee meetings dated 29 December 2014 and 28 May 2015 at this stage, Mr. Patwardhan would raise an alternative

objection that even if the membership of 9 persons is assumed to be valid on account of post facto approval by the general body, the enrollment of other 9 members is required to be held invalid as their enrollment is done by the managing committee when the Memorandum of Association empowers only the general body to enroll new members. Mr. Talkute however relies on resolution adopted by the general body on 16 May 1999 delegating the power of enrollment of new members to the managing committee. In my view this is something which needs to be decided in Section 22 inquiry if any objection is raised about enrollment of those 9 members inducted by the managing committee.

49) This is not a case which involves sudden introduction of 18 new members. The 18 new members have been enrolled over a period of time during 15 long years from the year 2000 to 2015 and it is difficult to conclude at this juncture that their membership would automatically vanish only because the Deputy Charity Commissioner did not approve occurrence of change relating to election of Governing Councils. More importantly, the Change Reports were never contested and nobody questioned the validity of enrollment of new members by opposing the Change Reports on that ground. It is also not a case that election of Governing Council members during 2016 to 2019 was attributable only to the enrollment of the said 18 new members. Out of the said 18 new members, only 9 were enrolled by the time the Change Reports were filed. Also of relevance is the fact that most of the intervenors whom Mr. Patwardhan represents, have participated in the General Body Meeting held on 26 September 2015 in which Resolution was adopted for granting post-facto approval to enrollment of 9 new members who got enrolled by the Governing Council in meetings held on 29 December 2014 and 28 May 2015. To make the case worse for the Intervenors, some of them were part of Governing Council which adopted Resolution in Meeting held on 29 December 2014 which decided to enroll 6 new members. Also of relevance is the fact that Shri. R. P. Patil (the first

Intervener) functioned as the Secretary of the Trust all these years and filed the relevant Change Reports. One of the Change Reports filed by him was for acceptance of some of the new members. He has participated in each of the managing committee and general body meetings and was a privy to decision of enrolling new members. Can he now take a *volte face* and question the right of those enrolled members to participate in Trust's elections ? The answer to mind appears to be in emphatic negative. It is therefore highly questionable as to whether the Intervenors can now turn around and question the enrollment of such new members which has taken place in a staggered manner over a period of 15 long years, that too with their active support.

50) As observed above, the issue of validity of membership cannot be decided by the Election Officer while preparing preliminary or final voters list. It is the duty of the Election Officer to include name of every single member in the voters list. The findings recorded by the Election Officer that 'आक्षेपकर्ते सभासद होण्यासाठीच्या पात्रतेच्या अटी पूर्ण करित नाहीत म्हणून त्यांचा अक्षेप अर्ज फेटाळणे योग्य वाटते' clearly seeks to suggest that he has ventured into the area of validity of membership which jurisdiction he does not possess. Once the Division Bench of this Court in its order dated 10 May 2024 had set aside the decision of the Deputy Charity Commissioner for deletion of names of 18 enrolled members after 16 May 1999, it was otherwise highly improper on the part of the Election Officer to infuse life into the said illegal decisions of the Deputy Charity Commissioner, which was already set aside by this Court. It is inconceivable that what could not be done by a Deputy Charity Commissioner under the provisions of Section 41A of the Act can be permitted to be done by the Election Officer while deciding the objections to the preparation of preliminary voters list.

51) The last issue that needs to be decided is about the exact proceedings in which the issue of validity of enrollment of 18 new members

can be decided, in the facts and circumstances of the present case. The Division Bench of this Court has already ruled that the said issue could not have been decided while passing an administrative order under Section 41A of the Act. I have held that the issue can also not be decided by the Election Officer while deciding objections to preparation of voters list. In my view, the said issue needs be decided, in the unique facts and circumstances of the present case, in the enquiry which would be conducted with regard to the change that would take place after conduct of the elections. Once the Governing Council is elected as a result of the elections, the change would get reported to the Deputy Charity Commissioner for alteration of entries in Schedule-I and at that stage, the Deputy Charity Commissioner, can decide the issue, if raised, as to whether enrollment of 18 members after 16 May 1999 was valid and whether they had right to vote in the elections. Thus, intervenors, whom Mr. Patwardhan represents, would not be remediless and can always challenge the election by questioning the validity of enrollment of members after 16 May 1999, as well as right to participate and vote in the elections.

52) In the facts and circumstances of the present case, it would also be more appropriate to permit members enrolled after 16 May 1999 to participate in the election process at this juncture, rather than keeping them away. They are functioning as members of the Trust for the last several years and merely because appointment of Governing Council members could not be approved by Deputy Charity Commissioner on account of rejection of Change Reports, it would be iniquitous to deny them opportunity to participate in the election process. Also of relevance is the fact that in the final voters list, only 16 members are included by the Election Officer who were members as on 16 May 1999. Thus, elections to the Governing Council of the Trust are thus sought to be conducted by letting only those 16 members to participate therein by keeping out those members who not only got enrolled during the next 15 long years, but who have participated in the

activities of the Trust for the last 25 long years. It would therefore be appropriate to allow the members enrolled after 16 May 1999 to participate in the election process, at this juncture, rather than excluding them thereby subjecting the election process to unsusceptible challenge by them while deciding the Change Report. At the same time, the Intervenor would not be remediless and if they believe that 18 members have not been validly enrolled or that they were not eligible for being enrolled, they can always question the Change Report filed for reporting change in composition of Governing Council by raising the issue of validity of enrollment of members.

53) Before parting it would be necessary to deal with the submission of Mr. Patwardhan that it would be impermissible for this Court to interfere in election process by entertaining the present petition. He has relied upon judgment of Single Judge of this Court in *Shivaji* (supra) wherein this Court held in para 25-30 as under:

25. The rival submissions of the parties pertaining to the membership involve disputed questions of facts. Various proceedings pending amongst them and decided in past have to be taken into account to address the issue of membership. This Court cannot embark an enquiry into hotly disputed questions of facts, namely membership in the present matter. The petitioners have alternate remedy of agitating the validity of membership either after conclusion of elections in the change report to be submitted U/Sec. 22 of the Act or independently before the competent forum. It is open for the parties to question the validity of the election, procedure adopted for the same, validity of voters as well as validity of elected candidates. A full fledged enquiry which is quasi judicial in nature is contemplated U/Sec. 22 of the Act. There are further remedies also provided under the Act after the decision U/Sec. 22 of the Act. An adequate and full fledged remedial procedure is available for the petitioners. Therefore, I prefer not to answer the validity of the membership of the litigating parties in this matter.

Point No. (III) Whether the directions to conduct election from list of members Exhibit 46 in Change Report No. 3239 of 2018 is valid?

26. The learned counsel for the petitioners have vehemently submitted that the Dy. C. C. is not empowered U/Sec. 41A of the Act to dwell upon the membership and issue any directions restricting the right to participate in the elections. They have strong objection for directions issued in clause No. 4 of the impugned judgment and order. For that purpose they have relied

upon various judgments referred to above. It is clarified that the findings recorded by Dy. C. C. that the list of members at Exhibit 46 in Enquiry No. 3239 of 2018 shall not be an impediment to reagitate them in an enquiry U/Sec. 22 of the Act or before any other competent forum. This aspect can be gone into independently. The validity of Clause No. 4 of the impugned judgment can be decided U/Sec. 22 of the Act after conclusion of the election. Considering the disputed questions of facts, availability of alternate remedy and want of affected parties before this Court, I defer to answer point No. III and relegate the parties to the alternate remedy.

Point No. (IV) Whether it is permissible to entertain the petitions at this stage of election process?

27. The learned counsel for the petitioners have cited judgment dated 06.09.2023 rendered by the Supreme Court in the matter of *Union Territory of Ladak v. Jammu and Kashmir National Conference* in Civil Appeal No. 5707 of 2023, *Ahmednagar Zilla S.D.V. & P. Sangh Ltd. v. State of Maharashtra*, (2004) 1 SCC 133, *Pundlik v. State of Maharashtra*, AIR 2005 SCW 4371. So also the judgment of this Court in the matter of *Chandrakant Mahadev Patole v. State of Maharashtra*, 2010 All MR (Supp.) 457 to buttress that the powers of the High Court cannot be faltered, just because the process of election has commenced. To repel the submissions, the learned counsel for the respondent No. 3 has also cited the judgment of of the Supreme Court in the matter of *Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahkari Dugdha Utpadak Sanstha v. State of Maharashtra* (supra).

28. The judgments cited by both sides are pertaining to the elections of the Co-operative societies. The peculiar feature of the matter in hand is that the litigating sides wanted to have election. The tenure of the outgoing committee is expired long back. Besides clause No. 4, there are no serious disputes. Hence I am of the considered view that decisions cited at bar for exercise of powers of the High Court when election process has commenced may not be dilated further.

29. In the present case the election is of a trust which is to be regulated by bye-laws and/or the directions issued by the Charity Commissioner under the Act. The election process and the result are subject to the approval of the competent authority U/Sec. 22 of the Act. It is special feature of the administration of the trust under the provisions of the Act that election comes within the purview of Section 22 of the Act. It is mandatory U/Sec. 22(1) of the Act to report the change to the Deputy or Assistant Charity Commissioner within 90 days. This is a sufficient safeguard provided by the statute. Therefore, any illegality in the process of election including the membership cannot go unnoticed. They are always decided in the scrutiny of Section 22 of the Act. The election programme has progressed to advance stage. The list of contesting candidates is to be published on 06.11.2023. Thereafter the proper voting is to be conducted on 26.11.2023 and result is also scheduled on the same day. Therefore, I answer point No. IV in the negative.

30. In view of above discussion, I hold that no interference is called for in the impugned judgment and order dated 09.10.2023 passed by the learned Deputy Charity Commissioner, Latur in Suo Motu Enquiry No. 538 of 2023 as well as the election process. Both the writ petitions are disposed of with liberty to the litigating parties to agitate all the issues including validity

of membership, election process, results thereof before the competent authority after conclusion of election process. Rule is discharged.

54) In my view, the judgment in *Shivaji* cannot be read in support of an absolute proposition that this Court cannot entertain the present petition only because the election process has commenced. The judgment in *Shivaji* is rendered in the light of facts of that case. In *Shivaji*, while issuing direction under Section 41A of the Act to hold elections, the Deputy Charity Commissioner had simultaneously restricted the elections only to the members enlisted in Exhibit-46 of Change Report No. 3239/2018. It appears that the members whose names did not find place in said exhibit questioned the order of the Deputy Charity Commissioner *inter alia* on the ground that the Deputy Charity Commissioner did not have jurisdiction to declare the members listed in Exhibit-46 as valid members. While upholding the directions for holding the elections, this Court did not answer the issue of validity of membership of litigating parties on the ground that Petitioners therein had the alternate remedy of agitating validity of membership after conclusion of elections in the Change Report submitted under Section 22 of the Act. In fact, one of the issues before this Court was about jurisdiction of the Deputy Charity Commissioner to deal with the issue of membership while deciding the proceedings under Section 41A of the Act. This Court has however not decided the said issue. The issue has subsequently been decided in the present case by Division Bench on 10 May 2024. The learned Single Judge did not have benefit of judgment of the Division Bench of this Court dated 10 May 2024 in accordance with which it could have been held that direction of the Deputy Charity Commissioner therein to decide the issue of membership was invalid. However, since this Court in *Shivaji* held that issue of membership can be decided under Section 22 of the Act after conclusion of elections, it chose not to interfere in ongoing election process by entertaining the petition. In the present case however, the direction of the Deputy Charity Commissioner for exclusion of 18 members while deciding

Section 41A proceedings has been expressly set aside by Division Bench and as of now, there is no order which seeks to exclude them from membership of Trust. This is a reason why I have arrived at a conclusion that the elections can go ahead, as of now, by including names of members enrolled after 16 May 1999 in the voters list. Therefore, judgment in *Shivaji* would not come in way of this Court directing slight tweaking of the election program, which as on the date of closure of hearing, had progressed only upto receipt of nominations. This course of action however is adopted considering the unique facts and circumstances of the case.

55) I am therefore of the view that the impugned order dated 10 January 2025 passed by the Election Officer is indefensible and liable to be set aside. The petition accordingly succeeds and I proceed to pass the following order:

- (i) Order dated 10 January 2025 passed by the Election Officer as well as Final Voters List dated 13 January 2025 are set aside.
- (ii) The Election Officer is directed, as of now, to include the names of all the 18 members enrolled after 16 May 1999 in the Final Voters List and shall accordingly proceed ahead with the elections by suitably amending the election program.
- (iii) The issue of right of members enrolled after 16 May 1999 to participate and vote in the elections is expressly kept open to be agitated, if necessary, in inquiry under Section 22 of the Act.

56) With the above directions, the Writ Petition is **allowed**. Rule is made absolute. Interim Application also stands disposed of. Considering the facts and circumstances of the case, there shall be no order as to costs.

[SANDEEP V. MARNE, J.]

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