

Prabhakar Vs. Dr. Jamnadas

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Court : Mumbai

Decided On : Nov-04-1996

Reported in : (1997)99BOMLR166

Judge : B.U. Wahane, J.

Appeal No. : First Appeal No. 478 of 1993

Appellant : Prabhakar

Respondent : Dr. Jamnadas

Disposition : Appeal allowed

Judgement :

B.U. Wahane, J.

1. In this First Appeal under Section 72(4) of the Bombay Public Trusts Act, 1950 (hereinafter referred as 'Act'), the appellants questioned the findings recorded by the District Judge, Chandrapur by the common Judgment in Misc. Civil Application No. 58 of 92 and Misc. Civil Application No. 64/92 dtd. 18.8.93 allowing the same and setting aside the order declared in favour of the Appellants in Appeal No. 8 of 92 passed on 7.10.1992.

2. After hearing the learned Counsel of the parties at length, a fair proposal came from the learned Counsel of the parties that the Society being in the name of Dr.

Babasaheb Amedkar, running an educational institution, in the interest of the Society, the parties settle their dispute amicably in stead of washing their dirty linen in public. It being a bona fide expression came from the learned Counsel of the parties, the members/trustees instead to be at logger-head and thereby to continue hurdles in the Management and administration of the Trust or Society, accepted the proposal and adjourned matter to persuade their clients to settle the matter amicably in the interest of the Society. The matter was thereafter adjourned day to day today to know the developments in the matter. Ultimately on 29.10.1996, both the learned Counsel of the parties informed the Court that there is no likelihood of amicable settlement.

The learned Counsel of the parties were allowed to make additional submissions. Consequently, heard Shri Charde, the learned Counsel for the appellant and Dr. Advocate Kulkarni for the respondents 1 to 5 and 8. The learned Counsel were directed to place on record the subsequent events. On 1.11.1996, Shri Charde, the learned Counsel for the appellants filed on record the synopsis giving subsequent events. The copy of the synopsis was served on other side on 1.11.1996, On behalf of the Respondents no such synopsis as regards the subsequent events came to be filed but during the course of argument the subsequent event i.e. election held on 15.11.1992 was specifically brought to the notice of the court

3. The facts, in brief, enumerated from the Memo of Appeal and the submissions made by the learned Counsel of the rival parties are as under:

That Dr. Babasaheb Ambedkar Memorial trust is registered under the provisions of the Bombay Public Trusts Act, 1950, bearing No. PTR No. F-106(C). The Trust is governed by its Rules and Regulations accepted and registered with the Assistant Charity Commissioner, Chandrapur.

No elections being conducted of the Trust, as per the Constitution of the Trust, the appellants were constrained to move an application under Section 41-A of the Act. The case was registered as Case No. 1/91 and was on the file of the Assistant Charity Commissioner, Chandrapur. During the pendency of the above proceedings, it is alleged by the Appellants that a bogus and false change report

came to be filed before the same Authority. It is the case of the Appellants that without any enquiry, the said change report was accepted by the learned Assistant Charity Commissioner, Chandrapur by its order dtd. 2.12.1991. It is revealed from the change report that there being three vacancies in the Governing Body, three new persons were inducted in the meeting alleged to have been held on 19.1.1991.

3. A. According to the Appellants, no legal notice was issued to the Appellants. The Appellants submitted that as they learnt about the meeting of 19.1.1991, they attended the venue of the meeting. The meeting being illegal not in accordance with the provisions of the Constitution of the Trust, they took objection and to that effect they made an endorsement in the Proceedings Book of the Society and thereafter they left the venue of the meeting. On the very day, the Appellants submitted a letter to the Chairman of the Society and requested to cancel the illegal meeting conveyed on 19.1.1991 (document no.7 on page No. 77 of the case).

4. The Assistant Charity Commissioner, Chandrapur prior to the passing of the final order dtd. 2.12.1991, earlier passed an order on 30.8.1991 which reads as under:

It prima facie appears that the change report is not according to the Constitution of the Trust. I have carefully gone through the original registration proceedings. However, it is desirable to hear the counsels at length before passing any final order.

From the original record called from the office of the Assistant Charity Commissioner, Chandrapur, it would be seen that the notices were issued to the reporting Trustees to produce the original documents and final order came to be passed by the Assistant Charity Commissioner, Chandrapur on 2.12.1991 which reads as under:

Perused the application and the documents filed on record. Also perused original Notice Book, members registered and proceedings book. I have also carefully perused written notes of arguments submitted by Adv. Warwade. It appears from

record that the vacancies are filled for completing the quorum of Executive Committee which was necessary. I am satisfied from document on record that the reported change is legal and hence it is accepted.

Schedule-I be accordingly amended.

5. Being aggrieved by the aforesaid order dtd. 2.12.1991, the present appellants filed an Appeal before the Joint Charity Commissioner, Nagpur Region, Nagpur, vide appeal No. 8/92 under Section 70 of the Act. The reporting trustee Shri Padmakar Uddhao Nagarale was joined as Respondent. The three inducted persons being strangers, they were not joined as parties in the Appeal.

After hearing the parties, in Appeal No. 8/92, the Joint Charity Commissioner, Nagpur Region, Nagpur, by it's Judgment dtd. 7.10.1992, set aside the change report accepted by the Assistant Charity Commissioner.

The Respondents 1, 2 and 3 approached the District Judge, Chandrapur, by filing Misc. Civil Application No. 58/92. The District Judge, Chandrapur allowed both the Misc. Civil Appeals No. 58/92 and 64/92 by the common order and set aside the order dtd 7.10.1992. In Appeal No. 8/92 passed by the Joint Charity Commissioner, Nagpur, rejecting the change report No. 181/91 under Section 22 of the Act and thereby confirmed the order dtd. 2.12.91 passed by the Assistant Charity Commissioner, Chandrapur accepting the change report No. 181/91.

6. With the assistance of Shri Charde, the learned Counsel for the Appellants, Shri S.P. Dharmadhikari and Dr. Kulkarni, the learned counsels for the respondents 1 to 5 and 8, I perused the findings recorded by the Courts below and other documents which were filed on record by the parties.

7. Shri Charde, the learned Counsel for the Appellants vehemently submitted that in the instant First Appeal, many legal aspects are involved as regards the induction of three strangers as trustees which act is contrary to the provisions of the Constitution of the Society/Trust, which goes to the root of the case and secondly allowing the Respondents 1 to 5 and 8, to produce the documents at the stage of hearing the application by the District Judge, Chandrapur, without giving

an opportunity to rebut the contents of the documents, and placing reliance on such documents, the impugned order passed by the learned District Judge, Chandrapur, is ipso facto illegal. Both the learned Counsel for the parties, took me through the various provisions of the Constitution as regards the eligibility to become the member of the Society, cancellation of membership, induction of the new members etc. etc.

A Memorandum of Association of the Society is on record as document no.6 at page 68. In accordance with 'Clause 4' of the said Memorandum the membership of the Society is divided in three classes as under:

(i) Patrons :- Any person paying lumpsum donation of Rs. 500/- or more to the society shall be eligible to be enrolled as a patron of the society and shall be entitled to the privilege of a patron;

(ii) Life members :- Any person paying lumpsum donation of Rs. 100/- or more to the Society shall be eligible to be enrolled as a life member of the society and shall be entitled to the privileges of life member;

(iii) Subscribers :- Any person paying Rs. 15/- per year as a subscription to the society shall be eligible to be enrolled as a subscriber of the society and shall be entitled to the privileges of a Life Member.

'Clause 5' deals with Control and Management of the Society by the following Bodies;

(i) Governing Body, and

(ii) General Council.

In accordance with the Clause 6, the Governing Body consists of fifteen members. Out of these fifteen members not less than eleven shall be the Buddhists.

Clause 7, deals with the Office bearers of the Governing Body, as under:

(i) Chairman,

(ii) 2 Vice-chairmen,

(iii) Secretary,

(iv) 2 Joint Secretaries

In accordance with the Clause 8 of the Memorandum of Association of the Society, the office bearers and other members of the Governing Body shall be elected by the members of the General Council.

Clause 9 provides the term of the Governing Body and its other members which reads as follows:

The term of office of the office bearers and other members of the Governing Body shall be three years unless terminated by death, incapacity, resignation or removal. A person whose term of office has expired will be eligible for renomination.

Clause 13 deals with the Supreme Control and Government of the Society, which reads as under:

The supreme control and government of the Society, its institutions, its property and its funds shall be vested in the Governing Body.

Clause 14 deals with the powers of the Governing Body as against the removal of any members which reads as under:

The Governing Body shall have power to remove any member of the Governing Body, or the General Council from that body provided that two thirds of the members of the Governing Body present at a meeting specially called for the purpose, vote in favour of his removal.

Clause 15 deals with the General Council which reads as under:

There shall be a General Council. The General Council shall consist of all members i.e. patron, life members and subscribers

8. Shri Charde, the learned Counsel for the appellants vehemently submitted that the Assistant Charity Commissioner, Chandrapur, held no enquiry while accepting the change report submitted by the Respondents 1 to 3. The order dt. 2.12.1991 passed by the Assistant Charity Commissioner, Chandrapur speaks that;

Perused the application and the documents filed on record. Also perused original Notice Book, Members registered and proceedings Book and also the written notes of arguments submitted by Shri Warwade, Advocate.

9. The Appellants have specifically challenged that the three alleged inducted members viz. (i) Shri Ashok Ganpatrao Gedam, of Nagpur, ii) Dr. Jamnadas Patruji Khobragade of Chandrapur and iii) Shri Deshak Girish Khobragde of Chandrapur, were not the members of the Society/Trust. Thus, the strangers were inducted without following the procedure. No documents were placed before the Assistant Charity Commissioner, Chandrapur to indicate that the three alleged inducted members were already accepted as members of the Society either by the Governing Body or General Council. All the proceedings of the lower courts not being available, the original record from the office of the Assistant Charity Commissioner, Chandrapur, was called. Perusal of the documents on which the order dtd. 2.12.1991 is based, it is clear that we could not find any receipts as regards enrolling of the alleged three inducted members as the members of the, General Council of the Society as also we could not find the copy of the Members Register.

Prior to the induction of the alleged three members in the meeting dtd. 19.1.1991, the vacancies were occurred due to death of the three members of the Governing Body viz. (i) Mr. Chiwande died in the year 1986, ii) Shri Khapekar-died in 1987 and (iii) Shri B.D. Khobragade-died in 1990.

10. Considering the evidence placed before it, the learned Joint Charity Commissioner, Nagpur evaluating the evidence and the legal provisions, in para 12 (page 47-48) of the Judgment, observed as;

I would like to state that there were vacancies which occurred on account of the death of the members and though it is not specifically mentioned in Exh. 1 the

Change Report but then it can be very well said that the appellants were aware of the fact that the death of Ragnobaji Chiwande, S.D. Khapekar and B.D. Khobragade were in the years 1986, 1987 and 1990 respectively. It is slated by Shri Masodkar that there was no resolution whatsoever to admit new members in the Society though Mr. Warwade has stated that as if in the past on or about 2.12.78 there was resolution and implementation for filling up vacancy was resorted to. Whatever it may be, as I have already stated that no inquiry was held by the trial Court to find out if really these persons now sought to be inducted by this change were persons duly brought on record within the framework of the Constitution of the said Trust when in the said meeting dtd. 19.1.1991 they acquired the status of members of the Governing Body.

11. At this stage, I feel it necessary to record the submissions made by Shri Charde, the learned Counsel for the Appellants to the effect that there being no election of the Society/Trust, in spite of the repeated requests made by the Appellants and other members, no election was ever held. Consequently, the appellants and five others were compelled to send the letter dtd. 1.1.1991 to the Chairman duly signed by 8 members under Section 25 of the Bye-laws of the Society requesting to requisite the meeting

Clause 25 of the Memorandum of the Association of the Society speaks as under:

The Chairman of the Governing Body in his discretion or on a requisition of any five member of the Governing Body, may at any time summon a special meeting of the Governing Body or General Council for any cause that seems to be sufficient.

12. The Notice has not been disputed. However, nothing has been placed on record nor submitted that the requisitioning notice dated, 1.1.91 was either replied or complied with.

The Resolution alleged to have been passed in the meeting dtd. 19.1.1991 appears to have been verified from the original proceedings Book and it is found correct by an endorsement dtd. 29.8.1991. The third para of the copy of the Resolution speaks that;

Before the commencement of the meeting, Shri P.B. Meshram, Adv. B.R. Kamble and R.M. Ramteke - members of the Trust, took the possession of the proceedings Book and they have put remarks taking objection to the meeting. Thereafter, they left the meeting hall. Thereafter the meeting was held where 7 members were present. By Resolution No. 2, 3 persons named above were inducted in the Governing Body. Perusal of the Resolution did not indicate that prior to their induction in the Governing Body, they were enrolled as members of the General Council.

In view of the facts as find place in the Proceeding Book as regards the objections to the meeting dtd. 19.1.1991, it was the duty of the Assistant Charity Commissioner to issue notice to the appellants, accord hearing to them, before accepting the change report. Apparently, no such procedure was adopted. In view of the objection which transpired from the Proceeding Book, the duty cast upon the Assistant Charity Commissioner to issue notice to the appellants. At this stage, it is submitted on behalf of the Respondents that the appellants have not raised any objection before the Assistant Charity Commissioner, Chandrapur

The members who raised objection as regards the illegality of the meeting dtd. 19.1.1991, are not expected to file objection unless they had knowledge that the change report is filed before the Assistant Charity Commissioner. Considering the facts and circumstances of the case, the Assistant Charity Commissioner, Chandrapur ought to have been issued notices to the appellants granting opportunity of hearing which includes evidence.

13. In a case of Jagatnarayansingh Swarupsingh Chithere and Ors. v. Swarupsingh Education Society and Anr. 1980 Mh. L.J. 372. His Lordship has discussed the scope of Section 22 and Rule 7 of the Act and observed as under:

Though prima facie it appears to be a mere change, the inquiry under Section 22, Bombay Public Trust Act is a judicial process and cannot be mere factual process or one purely of a formal nature. Investigation into the legality and validity of the change is implicit. The mere fact that a suit lie cannot nullify its judicial character and trappings nor can it obviate the need to determine either suo motu or at the instance of party aggrieved the legality and validity of the change in question.

Thus, the injury under Section 22, does not relate only to the factum of the change but also to its legality and validity.

14. The word 'judicial inquiry' is defined in Black's Law Dictionary as under:

Such inquiry investigates, declares and enforces liabilities as they stand on present or past facts and under laws supposed already to exist.

Therefore, the judicial duty requires use of discretion or examination of the evidence and the decision of question of law and facts. It thus aptly makes it clear that there must be a judicial decision. Meaning of 'judicial decision' has been enumerated in Aiyar's Judicial Dictionary, 10th Edition 1988 as under.

Judicial decision-meaning of true judicial decision presupposes an existing dispute between two or more parties and then involves four requisites:

(1) The presentation (not necessarily orally) of their case by the parties to the dispute;

(2) If the dispute between them is a question of fact, the ascertainment of the fact by means of evidence adduced by the parties to the dispute and often with the assistance of argument, by or on behalf of the parties, on the evidence;

(3) If the dispute between the is a question of law, the submission of legal argument by the parties; and

(4) A decision, which disposes of the whole matter by a finding upon the facts in dispute and application of the law of the land to the facts so found, including, where required a ruling upon any disputed question of law.

15. The relevant clauses of the Memorandum of Association of the Society have already been reproduced in the earlier para which makes it clear that the members of the Governing Body are elected from the General Council. Clause 14 is regards the removal of any member of the Governing Body. Both the learned Counsel have fairly conceded that there is no specific provision to induct the new members, in the Society. However, Shri Dharmadhikari, the learned Counsel for the Respondents 1 to 5 and 8 vehemently submitted that the powers regarding the

removal of the member of the Governing Body being vested in the Governing Body, it has power to induct any member in the Society. On the contrary, Shri Charde, the learned Counsel for the appellants submitted that in accordance with Clause 8 of the Memorandum of Association of the Society, the office bearers and other members of the Governing Body being elected by the General Council, the powers to induct any member is vested in the General Council. I find considerably force in the submissions of Mr. Charde, the learned Counsel for the appellants.

15-A. Shri Dharmadhikari, the learned Counsel for the Respondents 1 to 5 and 8 submitted that the present First Appeal be treated as Second Appeal and it being the Second Appeal, all the impediments available in the Code of Civil Procedure be made applicable while deciding the same. It is further submitted by the learned Counsel that in the present First Appeal no legal question of law has been raised and as such the First Appeal is liable to be dismissed. A reliance has been placed on a case of Maqbul Ahmed Miya Girav since deceased by L.Rs. Abdul Aziz and Ors. v. Hidayatulla Baldi and Ors. 1992 Mh. L.J. 1526, and Sayyad Mahboobali Yasin and Anr. v. Abdul Rahiman Kadar Bax Rangrej and Ors. 1991 (2) Mh. L.R. 131.

In both these cases, Their Lordships have referred the decision of the Hon'ble Supreme Court in ease of Ramchandra Goverdhan Pandit v. Charity Commissioner of State of Gujrat : [1987]2SCR1083 . This was the case under the Bombay Public Trusts Act in which Their Lordships of the Supreme Court observed that.

the power of the District Court in exercising jurisdiction under Section 72 is a plenary power. The District Court has got power to correct, modify, review or set aside the order passed by the Commissioner, All the characteristics of an appeal and all the powers of an Appellate Court are available to the District Court while deciding the application under Section 72 of the Act. In such a case one must be guided not only by the nomenclature used by the section for the proceedings but by the essence and content of the proceedings. It was, therefore, held that the proceedings before the District Court under Section 72(1) are in the nature of an appeal and that the District Court exercises appellate jurisdiction while disposing

of a matter under Section 72(1).

Shri Charde, the learned Counsel for the appellants, on the contrary, placed reliance on a case of *Godawaribai wdlo Manilal Trivedi v. Rambhau Madhavrao Fating and Ors.* 1992 Mh. L.J. 230 (M.S. Deshpande, J), in which relying on the case of *Ramchandra Goverdhan Pandit v. Charity Commissioner* : [1987]2SCR1083 , (cited supra), the Hon'ble Judge took a contrary view. Construing the principles laid down by the Hon'ble Supreme Court in a case of *Ramchandra v. Charity Commissioner* cited supra, provisions of Section 72(4) of Bombay Public Trusts Act and requirements laid down in Section 100 of the Civil Procedure Code, the Hon'ble Judge observed that;

Under Section 73 of the Bombay Public Trusts Act, in holding inquiries under this Act, the officer holding the same shall have the powers as are vested in courts in respect of certain matters under the Code of Civil Procedure, in trying the suit, but otherwise the provisions of the Code of Civil Procedure cannot be availed for determining the scope of the appeal filed under Sub-section (4) of Section 72. The amplitude of the powers which the court would have under Sub-section (4) of Section 72 will have to be determined upon the interpretation of the words used in Sub-section (4) because the provisions of Section 100 of Civil Procedure Code would not apply to the appeals filed under Sub-section (4) of Section 72 of Bombay Public Trusts Act, and the appeal cannot be confined only to a substantial question of law formulated for decision. 18 GLR 488, Rel. Contrary view in 1987 (3) BCR 493, Ref. and case decided on counsel having no objection to the evidence being considered in order to obviate reference to Larger Bench.

With due regard to the learned Judges of this Court, I do not want to enter into the controversy as regards the contrary view taken by the learned Judges of this Court. Considering the facts and' circumstances of this case, it is clear that the Assistant Charity Commissioner, Chandrapur or the District Judge, has not considered the provisions of the memorandum of the Society, the non-issuance of the notice to the aggrieved parties, about the legality of the meeting alleged to have been held on 19.1.1991, who opposed the meeting dtd. 19.1.1991 as regards the alleged induction of the members, by making an endorsement in the

proceedings book and issuing the notice in detail on the very day i.e. on 19.1.1991, all these aspects go to the root of the matter. There being no discussion, presuming the instant First Appeal be treated as Second Appeal and legal questions being raised in this appeal, I feel it just and proper, in the interest of the Trust and its institutions, to exercise the jurisdiction and interfere with the findings recorded by the District Judge, Chandrapur and the Assistant Charity Commissioner, Chandrapur. In a case of Mohd. Yunus v. Gurubux Singh : (1995)1SCC418 . Their Lordships of the Supreme Court have observed that;

Where there is a gross misappreciation of evidence which goes to the root of the matter, certainly the second appellate Court can exercise its jurisdiction. Here the documents which are relied on by the appellant do not show that it was addressed to Respondent G. In order to establish the same, the postman should have been examined. The High Court is right in its conclusion. As regards the next contention, the mere ipse dixit, even without any cross-examination by the Supreme Court of the appellant, will not establish that the money orders were addressed to the respondent.

16. In the instant case, there are no concurrent findings of facts. The First Appellate Court i.e. the Joint Charity Commissioner, Nagpur, set aside the change report accepted by the Assistant Commissioner, Chandrapur. In the appeal preferred by the Respondents 1, 2 and 3, the findings recorded by the Joint Charity Commissioner, Nagpur, came to be set aside. Thus, there are no concurrent findings of facts.

17. The learned District Judge, Chandrapur in the impugned Judgment observed in para 12 of the Judgment as under:

It is the contention of the objecting trustees that the three reporting trustees who were inducted in the meeting dtd. 19.1.1991 were never members of society. However, this contention is repudiated by the reporting trustees who submitted that by paying donation of Rs. 100/- each they became life members of the Society on 11.1.1991. This submission of the reporting trustees is bound by the receipts issued by the Secretary of the Society dated. 11.1.1991 filed under list Exh. 5 in Misc. Civil Application No. 58/92. There is no reason to doubt authenticity of these

receipts. These receipts clearly show that the three reporting trustees by paying donation of Rs. 100/- each became Life Members of the Society and were recognised as such by the Society on 11.1.1991. Hence, the contention of the objecting trustees that these three reporting trustees were not the members of the Society and as such were not qualified to become the members of the Governing Body, has to be rejected.

18. From the perusal of the order passed by the Assistant Charity Commissioner, Chandrapur, on 20.5.92 and the Judgment and order passed by the District Judge, Chandrapur on 18.8.93 which is impugned herein, it is clear that the documents filed under list Exh. 5, in Misc. Civil Appeal No. 58 of 1992, dtd. 11.1.1991, which read as receipts for the payment of Rs. 100/- to become life members of the Society, came to be filed for the first time in the court of District Judge, Chandrapur in Misc. Civil Application No. 58/92. There is no indication that the copy of the application and the list together with Exh. 5, was supplied to the appellants. Therefore, the opportunity was denied to the appellants to lead the evidence and prove contrary.

It is the settled principle of law that the Superior Court has to set aside the findings recorded by the Sub-ordinate Court, if it is found that the Subordinate Court has not considered the evidence, documents and submissions made by the parties. In other words, it means that the appellate Court has to consider the evidence which was available before the subordinate Court. If any additional evidence is placed before the Appellate Court as in the case before the District Judge, Chandrapur, the additional evidence was placed in the form of Exh.5 i.e. the receipt of Rs. 100/- each, opportunity ought to have been accorded to the appellants but no such opportunity being granted to challenge, the findings recorded by the District Judge, Chandrapur, on the basis of Exh. 5, deserve to be quashed and set aside.

19. Lastly, Shri Dharmadhikari, the learned Counsel for the respondents 1 to 5 and 8, submitted that in view of the subsequent developments during the pendency of the appeal and particularly that there was an election of the Society on 15.11.1992, in view of the directions issued by the Assistant Charity Commissioner, the working of the Society is going on smoothly and, therefore, in

the interest of the Society/Trust, the instant First Appeal deserves to be dismissed. To substantiate the submission, the learned Counsel for the respondents 1 to 5 and 8, placed reliance on a case of Jagatnarayan Singh Swarupsingh Chithere and Ors. v. Swarupsingh Education Society and Anr. 1980 Mh. L.J. 372, His Lordship observed that;

Subsequent events-Court cannot ignore them but must mould its order in the light thereof-Appellants challenging change in managing body-Term of managing body expiring by time of hearing appeal and new body taking charge - Old body during its regime carrying on only routine administration Legality of election of old body thus becoming merely academic - Remand not warranted.

20. Shri Charde, the learned Counsel for the appellants submitted that the election which is alleged to have been held on 15.11.92, was not in consonance with the provisions of the Constitution of the Society and the principles of natural justice. Same is challenged before the Court and is pending. It is further submitted that as per the Resolution passed in the meeting dtd. 19.1.91, three persons were inducted as the members of the Governing Body, against that induction the present appeal. In para 4 of Synopsis datd. 1.11.1996, it is submitted that in the meeting held in November 1992, five other members are inducted as the members of the Governing Body, who are the relatives of Shri Gotekar - the President of the Society elected in 1990. They are as;

1. Gokul Gotekar - his father.
2. Rupa Gotekar - his wife.
3. Ashok Gotekar - his real brother.
4. Wamanrao Modak - sister's husband.
5. Maroti Khobragade - Real brother of
Dr. Jamnadas Khobragade.

According to the appellants, the above five persons came to be inducted without any notice and without lawful meeting of the trustees of the General Body to enrol

the new members. Thereby it is submitted that though the Society or Trust appears to be a Public Trust, considering the members of the Governing Body, it is no more a public trust but the private Trust of a family and their kith and kin only. In view of this, according to the appellants, it is difficult to say that there is a proper administration as per the Rules and Regulations, The present Governing Body, after January 1991, being of the blood and close relations, there is no supervision as such over the Governing Body. Considering these events and the facts of the case in hand, the view expressed by his Lordship in a case of Jagatnarayan Singh Swarupsingh Chithere and Ors v. Swarupsingh Education Society : (1995)1SCC418 and the principles laid down therein are not applicable to the instant case. In spite of mismanagement, mal-administration, misdirection and acting contrary to the rules and regulations, induction of new members in the Governing Body from January 1991, is causing great loss to the cause of the society, making such members to indulge in private game via a Public Trust.

In view of my observations on the issues raised in this First Appeal and considering the subsequent developments as submitted by the learned Counsel or the parties, giving conscious thought to the developments, I do not feel that the challenges to the meeting and resolution dtd. 19.1.1991 are merely academic and, therefore, I do not accept the submissions of Shri Dharmadhikari, the learned Counsel of the Respondents 1 to 5 and 8. In the interest of the Society the remand is not warranted.

21. In the result, the Judgment and Order dtd. 18.8.1993 passed by the District Judge, Chandrapur, in Misc. Civil Application No. 58/92, is quashed and set aside. Thus, the meeting dtd. 19.1.1991 and the resolution passed therein inducting three members is illegal. Consequently, the order dtd. 2.12.1991 passed by the Assistant Charity Commissioner, Chandrapur accepting the change report is set aside. Consequently meetings held after 19.1.1991 inducting new trustees and elections held with due participation of the three inducted members on 19.1.1991 and without notice to the appellants would be illegal and not binding on the appellants.

22. Thus, the instant First Appeal is allowed. No order as to costs.

