



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8127 OF 2008

- 1.Vijay K.Mehta,
- 2.Sushila V.Mehta,
- 3.Dr.Amritlal C.Shah,
A-791, Bandra Reclamation,
Bandra (West), Mumbai-400 050. ...Petitioners

Versus

- 1.Charu K.Mehta,
- 2.Rekha H.Sheth,
- 3.Niket V.Mehta,
A-791, Bandra Reclamation,
Bandra (West), Mumbai-400 050.
- 4.Mithun H.Mehta,
311-312 Chadda Crescent,
Sector-17, Vashi,
Navi Mumbai-400 705.
- 5.Jatin V.Mehta,
C-203, Nirman Vihar,
Rajmata Jijabai Road,
Andheri (W), Mumbai-400 093.
- 6.Sandeep Rathi,
61, Alaknanda, Road No.10,
J.V.P.D. Scheme, Juhu,
Mumbai - 400 049.
- 7.Sanjay Bhutada,
C-6, Gautam Towers,
Gokhale Road, Naupada,
Thane (W), Mumbai-400 602.
- 8.Kishor K.Mehta,
Usha Kiran, 18th floor,
15, Carmichael Road,
Mumbai - 400 026.

9. Rajiv K. Mehta,
Usha Kiran, 23rd floor,
15, Carmichael Road,
Mumbai - 400 026.
10. Prashant K. Mehta,
Usha Kiran, 18th floor,
15, Carmichael Road,
Mumbai - 400 026.
11. Prabodh K. Mehta
12. Rashmi K. Mehta
13. Chetan P. Mehta
14. Nanik Rupani
15. Vijay Choraria,
A-791, Bandra Reclamation,
Bandra (West), Mumbai-400 050.
16. The Joint Charity Commissioner,
Greater Mumbai Region,
Mumbai. ... Respondents

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Mr. Iqbal Chagla, Sr. Counsel with Mr. Sanjay Jain,
Mr. Kunal Vajani, Atul Daga and Mr. Rohan Dakshini
i/b M/s. Wadia Ghandy & Co. for Petitioner.

Mr. Mahesh Jethmalani with Mr. Raj Patel, Mr. Anushak
Davar, Ms. Hetal Thakore i/b M/s. Thakore Jariwala &
Associates for Respondent No.1.

Mr. Janak Dwarkadas, Sr. Counsel with Ms. Jyoti Shah
i/b M/s. Daru Shah & Co. for Respondent No.2.

Mr. Pranav Badheka with Mr. Amey Nabar i/b Hariani &
Co. for Respondent No.8.

Ms. R.C. Nichani i/b Hariani & Co. for Respondents 9
& 10.

Mr. Jay Kansara i/b Paras Kuhad & Associates for

Respondents 11 to 15.

Mr.P.P.Kakade, A.G.P. for Respondent No.16.
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CORAM: A.M.KHANWILKAR, J.

FEBRUARY 2, 2009.

ORDER :

1. This Writ Petition takes exception to the decision of the Joint Charity Commissioner (hereinafter referred to as 'the JCC' for the sake of convenience), Greater Mumbai, Region Mumbai dated 10th October 2008 passed on Application (Exhibit 2), whereby, pending enquiry of charges, the five trustees (including the present three Petitioners) have been suspended in exercise of powers under Section 41D(3) of the Bombay Public Trusts Act, 1950 (hereinafter referred to as 'the Act'). This Petition has been finally heard at the admission stage, by consent.

2. The moot question that needs to be addressed in this Petition is: whether the exercise of powers under Section 41D(3) of the Act by the JCC can be said to be just and proper in the

fact situation of the present case?

3. The background in which the present matter arises is that the Respondent No.1 filed Application before the JCC for initiating action under Section 41D of the Act against nine trustees of the Lilavati Kirtilal Mehta Medical Trust (hereinafter referred to as 'the Trust') on certain allegations elaborated in the said Application. The said Application is registered as Application No.17 of 2006. The Respondent No.1 claims to be a permanent trustee of the said Trust. The Trust is running a super speciality hospital in the name of "Lilavati Hospital" at Bandra, Mumbai and is a well-known hospital in the Country. The hospital has facility of 300 beds and out patients department, casualty department, etc. It engages nearly 1700 employees and 230 consultant Doctors attached to the hospital. In the said Application moved by the Respondent No.1, after allowing the parties to exchange documents and pleadings, the JCC by his order dated 3rd June 2008 on finding prima facie material to indicate the complicity of the said nine trustees proceeded to frame following



eight charges :

"C H A R G E S

1) The opponents No.1 to 9, trustees of the trust advanced huge amounts more than Rs.15 crores to M/s.Mayfair Realtors Pvt.Ltd. & Vesta India Pvt.Ltd. for procuring medical equipments during years 2001-02 to 2003-04 without taking proper care & despite failure by these companies to supply the equipments, did not take steps to recover the money & thus, continuously neglected their duties & committed mis feausance & also dealt improperly with the trust property.

2) The opponents No.1 to 9, trustees of the trust, gave donations regularly to the tune of Rs.6.36 crores from year 2003-04 to 2005-06 to Madhulaxmi Trust, without verifying that the donations are utilised to fulfil objects of the trust and thus, continuously neglected the duties & committed mis feausance & also dealt improperly with the trust property.

3) The opponents No.1 to 9, trustees of the trust & committed mis feausance & also dealt improperly with the trust property purchased a Honda Accord Car MH 02 MA 4343 for and in the name of Mr.Dushyant Mehta & thus dealt improperly with trust funds & mis appropriated the trust money.

4) Opponent No.9, a trustee of the trust, utilised the trust funds to the tune of Rs.36,06,470/- during financial years 2003-04 to 2005-06 towards payments of his credit cards & thus received personal benefits from trust funds & thereby mis-appropriated the trust money & committed mal feausance.

5) The opponents No.1 to 9, trustees of the trust arranged meetings of the trustees as well as other meetings at Antwerp, Belgium & other foreign

countries instead of India & spent huge amounts to the tune of Rs.58,40,456/- from year 2002-03 to August, 2006 & squandered the trust money & committed misfeasance & also dealt improperly with the trust property.

6) The opponents No.1 to 9, trustees of the trust have spent money from trust funds to meet travelling expenses of Mr.Suresh Motwani who has no concern with the trust, for his trips to Goa & Dubai & committed misfeasance & also dealt improperly with the trust property.

7) The opponents No.1 to 9, trustees of the trust, advanced amount of Rs.2.75 crores to M/s.Albina Developers Pvt.Ltd. without verifying its track record & without taking proper care & acted negligently in dealing with this transaction & committed misfeasance & also dealt improperly with the trust property.

8) The opponents No.1 to 9, trustees of the trust, allowed mis use of a trust account for the purpose of clandestine transaction in favour of Golden Sea Shell C.H. & thereby committed malfeasance."

4. Insofar as the relief claimed by the Respondent No.1 in Application (Exhibit 2) to suspend the trustees during the pendency of the enquiry, the JCC by the same order proceeded to hold that at the relevant time, he was not in a position to identify a fit person to be appointed to discharge the duties in place of the suspended trustees, which order could be passed in exercise

of provisions under Section 41D(4) of the Act. Against the said decision, the two trustees against whom charges were framed by the JCC filed Writ Petition No.3849 of 2008. The three other trustees against whom no allegations were made in the main Application filed by Respondent No.1 or any charges framed, filed separate Writ Petition being Writ Petition No.3850 of 2008 questioning the correctness of the decision of the JCC in his order dated 3rd June 2008. Both these Petitions were disposed of by the Single Judge of this Court on 11th July 2008. Insofar as the three trustees against whom there were no allegations in the Application or charges framed, the Court observed that the order passed against them, which was impugned in their Writ Petition was in gross violation of the principles of natural justice. By the said Judgement, the learned Single Judge was, however, pleased to set-aside only the interim order dated 3rd June 2008 and issued direction to the JCC to pass fresh interim order in accordance with law. Significantly, the relief as claimed by the two trustees in Writ Petition No.3849 of 2008 to set-aside the order framing charge against them

was not disturbed. The parties had moved the same learned Single Judge of this Court for speaking to minutes of the order passed earlier, which application was disposed of on 15th July 2008. The matter then proceeded before the JCC for passing necessary interim order afresh.

5. At the same time, the Petitioners in Writ Petition No.3849 of 2008 questioned the correctness of the view taken by the learned Single Judge in its Judgment dated 11th July 2008 and in turn, the order passed by the JCC framing charges by way of Letters Patent Appeal No.328 of 2008.

6. The JCC instead of deciding the pending Application (Exhibit 2) filed by the Respondent No.1 for suspending the charged trustees in exercise of powers under Section 41D(3) of the Act, adjourned the matter by order dated 23rd July 2008. Consequently, Writ Petition was filed challenging order dated 23rd July 2008 passed below Exhibit 1 in Application No.17/2007 being Writ Petition No.5732 of 2008. The said Writ Petition came to be disposed of on 9th September 2008 inter alia

directing the JCC to expeditiously decide Application (Exhibit 2) filed by the Respondent No.1 herein in accordance with law and not to pass a mechanical order of suspension solely on the ground that charges have already been framed against the concerned trustees. All questions in that behalf were left open. It is not necessary to refer to the other issues dealt with in the said decision.

7. Against this decision also, Letters Patent Appeal has been carried by the two trustees against whom charges have been framed by the JCC under order dated 3rd June 2008. In the pending Letters Patent Appeals, the Division Bench of this Court on 1st October 2008 passed following order:

"P.C. :

1. The learned counsel for the parties agree that the matter be taken up for disposal at the stage of admission. Tentatively, this court is listing the matter at 20.10.2008 at 3.00 p.m.

2. In the meantime, the proceedings before the Joint Charity Commissioner in the matter will go on. We make it clear that the Joint Charity Commissioner would not implement or give effect to the order which he may pass after concluding the hearing, if it is adverse to the

appellant/trustees and the order passed by the learned single Judge (A.M.Khanwilkar, J) will continue to operate in the field as it sufficiently protects the interest of the trust."

8. In view of this order, the JCC proceeded to consider the Application (Exhibit 2) in view of the direction issued by the Single Judge in Writ Petition No.5732 of 2008 decided on 9th September 2008. After granting opportunity to both sides to file affidavits and further material, the JCC proceeded to dispose of the said Application (Exhibit 2) by his order dated 10th October 2008. The JCC passed the following order:

"O R D E R

1) Pending disposal of charges, the trustees, respondent No.1 (Smt.Rekhaben Seth), Respondent No.3 (Smt.Sushila Mehta), Respondent No.6 (Dr.Amrutlal Shah), Respondent No.8 (Shri Niket Mehta) & respondent No.9 (Shri Vijay Mehta) of Lilavati Kirtilal Mehta Medical trust are put under suspension.

2) This order will not be implemented till further directions are received from Hon.High Court in Letters Patent Appeal No.328 of 2008 in Writ Petition No.3849/2008 with Letters Patent Appeal no.330 of 2008 in Writ Petition No.5732/2008, pending there.

3) The applicant (Ex.2) is accordingly

disposed of."

9. It is this order which is subject matter of challenge in the present Writ petition at the instance of three trustees out of five suspended trustees. Here it may be clarified that although charges have been framed against nine trustees, as four trustees have tendered resignation and were no more associated with the Trust, the question of suspending the said trustees did not arise. For that reason, the JCC proceeded to consider Application (Exhibit 2) only against five charged trustees who continued to be on the Trust. The two other suspended trustees besides the three Petitioners herein have not chosen to challenge the order of suspension. Whereas, the present Petition has been filed only by the three suspended trustees who were Respondent No.9, Respondent No.3 and Respondent No.6 respectively in the proceedings before the JCC.

10. To complete the narration of relevant events, it may be appropriate to refer to two other orders of this Court passed by the Division Bench

in pending Letters Patent Appeals. The one passed on 20th October 2008 and the other passed on 24th October 2008, which are reproduced thus:

ORDER DATED 20TH OCTOBER 2008

"P.C.:

1. Heard the learned counsel for the parties.

2. A preliminary issue is raised by the respondents regarding maintainability of these appeals. Sufficient time would be required for this court to hear the matter as this court proposes to dispose of the appeals at the stage of admission itself. In the meantime, the interim order passed by this court can continue to operate. We further make it clear that in place of trustees who have been suspended, no new trustees would be appointed or nominated.

3. The learned counsel for the appellants submit that as far as the order of suspension is concerned, the appellants propose to independently challenge the same. We make it clear that the pendency of these Letters Patent Appeals do not preclude the appellants from challenging the order of suspension by which they are aggrieved and which is a fresh cause of action in the matter.

4. In view of the fact that the appellants propose to challenge the order of suspension, our interim order which has been continued would stand extinguished as soon as the order of suspension is challenged before the learned single Judge and decision in the matter is taken.

5. Stand over to 24th November, 2008".

ORDER DATED 24TH OCTOBER 2008

"P.C.:

1. This application is made for speaking to minutes of the order dated 20th October, 2008.

2. We have heard the parties. In para 2 of the said order the last sentence namely, "We further make it clear that in place of trustees who have been suspended, no new trustees shall be appointed or nominated." stands substituted by "Parties will maintain statusquo on the board of trustees of the trust."

3. Para 4 of the said order is not required and therefore, stands deleted."

11. The learned Counsel appearing for the charged trustees against whom suspension order has been passed by the JCC have criticized the order of suspension on the argument that the charges framed by the JCC are ex-facie untenable. If so, the question of suspending the charged trustees on the basis of such infirm charges would be inappropriate. It was argued that there was no material to substantiate the finding recorded by the JCC that there was likelihood of further misuse of powers or influencing witnesses and tampering with the evidence. The said finding is based on conjecture and surmises. If that opinion is to be

discarded then there is no tangible material to sustain the order of suspension. This argument is on the premiss that the order of suspension during the pendency of enquiry is a drastic order and cannot be passed merely as a consequence of the order framing charges. It was argued that there was no possibility of any loss likely to be caused to the Trust on account of any action of the charged trustees. To buttress this argument, amongst others, reliance was placed on communication sent on the letterhead of M/s.Vesta India Ltd., dated 1st October 2008, under the signature of its authorised signatory Mr.Suresh Motwani. According to the suspended trustees, the said document was indicative of positive steps being taken by the charged trustees for recovery of the amount receivable by the Trust. It was contended that in any case, there was enough safeguards to check the activities of the charged trustees. In that, the charges were founded on the transactions effected between year 2001 to 2006 in respect of which, the entire record was already in custody of the JCC. There was no question of tampering the said record. Besides, as the charge

was founded on documents, the question of influencing the witnesses was a misplaced apprehension. It was then argued that the other trustees including the rival camp would continue to be associated in taking any decision for and on behalf of the Trust. Moreover, the Supreme Court appointed regime of Joint Administrators was also in place. Besides, the earlier restriction imposed by the JCC and as modified by this Court in its order dated 9th September 2008 restraining the charged trustees from taking any policy decision and to enter into any financial transaction with regard to the Trust without prior approval of the JCC till further orders was sufficient to protect the interest of the Trust. It was contended that there was neither possibility of charged Trustees influencing the enquiry or causing any loss to the Trust. In that case, there was absolutely no necessity to suspend the charged trustees and the enquiry can proceed even without suspension of the said trustees. It was then contended that already five trustees out of the nine charged trustees have resigned. The Respondents 14 and 15 have been restrained from acting as trustees. In such a

situation, the Trust will not be able to function especially in absence of Petitioner No.1 who for all this period responsibly discharged his duties and was successful in enhancing the income of the Trust manifold. On the above arguments, the order of suspending the Petitioners herein from acting as Trustees during the pendency of the enquiry has been challenged as inappropriate and unwarranted.

12. The question is: whether the order passed by the JCC suspending the Petitioners herein can be said to be manifestly wrong, perverse and untenable. To consider this aspect, we will have to advert to the reasons recorded by the JCC for recording his satisfaction to order suspension of the Petitioners herein and two others during the pendency of the enquiry in exercise of powers under Section 41D(3) of the Act. The JCC has first considered the decision of the Apex Court in the case of **Sri Digyadarsan Rajendra Ramdassjivaru v. The State of Andhra Pradesh** reported in 1969 (1) SCC 844 and another unreported Judgment of Division Bench of our High court in the case of **Gulabsingh Dipa Chavan & Ors. v. Joint Charity Commissioner,**

Maharashtra State, Bombay & Anr. (Special Civil Application No.1912/1976) decided on 18th December 1978 and deduced the principles to be kept in mind for exercising powers under Section 41D(3) of the Act to suspend the charged trustees during the pendency of the enquiry. It has then adverted to the decision in the case of **K.K.Ramamurthy Vs. State of Kerala** reported in 1972(II) L.L.J. 509, which deals with the principle to be kept in mind while suspending a civil servant against whom disciplinary proceedings are initiated. Reference is then made to another decision in the case of **State of Orissa Vs. Bimal Kumar Mohanti** reported in (1994) 4 SCC 126. Once again, this case deals with the suspension of Government Officer during the pendency of disciplinary enquiry. The JCC after culling out the principles stated in these decisions, proceeded to observe that many factors to be considered for suspension of Government Servant during pendency of Departmental Enquiry may be applicable for exercising powers under section 41D(3) of the Act to suspend the charged trustees during the pendency of enquiry. The JCC has adverted to the principle that the Court or the

Tribunal must consider each case on its own facts and no general law could be laid. That suspension is not a punishment, but is only one of forbidding or disabling an employee to discharge the duties of office or post held by him. That the suspension must be a step-in-aid to the ultimate result of the investigation or enquiry and lastly, that the Authority should always keep in mind public interest of the impact of the delinquent's continuance in office while facing departmental enquiry or trial of a criminal charge. The JCC has then adverted to the decision of **Sub-Divisional Officer Vs. Shambhu Singh reported in 1969 (1) SCC 825**, which dealt with person who was not a Government Servant but an elected representative. Even so, the principle highlighted is that the existence of power must be exercised when it is absolutely essential for the discharge of the power conferred and not merely that it is convenient to have such a power. The JCC has then adverted to two other decisions of the Supreme Court relied by the contesting Respondents which expounds the principles to be kept in mind by the Court while granting interim relief. The JCC has noted that

the said principles cannot be applied for exercise of powers under Section 41D(3) of the Act as the authority is not granting any interim relief as such in favour of any individual but is expected to pass an order in the interest of the Trust for its better management and to prevent further misuse of the Trust affairs at the hands of the charged trustees during the pendency of the enquiry and to prevent the trustees from hampering the course of investigation. In other words, the JCC first proceeded to examine the principles that ought to be borne in mind to exercise powers under Section 41D(3) of the Act and noted that gravity or seriousness of the charges, nature of evidence, necessity to keep the charged trustees away from the administration of Trust and from sphere of influence by passing order of suspension and that each case differs on facts.

13. The JCC then proceeded to examine other points raised on behalf of the charged trustees such as main Application is not maintainable, it is barred by limitation, barred by principles of res-judicata, etc. That the Applicant's son had

filed two criminal complaints based on same allegations against the Respondents which have been dismissed by the Court, for which, principle of double jeopardy would be attracted. That the names of some of the trustees are not on record and charge reports are pending. That charges are factually incorrect. The JCC has rejected each of these objections on the finding that the same were already addressed on the earlier occasion and were not relevant for deciding the matter in issue for exercising powers under Section 41D(3) of the Act to suspend the charged trustees during the pendency of the enquiry.

14. The JCC then adverted to the argument of the charged trustees that in any case, it was not a case of misfeasance or malfeasance but lapse of lesser degree. To consider this argument, the JCC proceeded to consider the charges already framed in seriatim, which, in his opinion, were suggestive of the gravity of charges. The JCC has adverted to the arguments in respect of each of the said charge and rejected the argument of the charged trustees.

15. The JCC has then adverted to the argument of the charged trustees that the hospital run by the Trust has yearly turn over of hundreds of crores of rupees and under the able charge of Petitioner No.1 herein there was considerable rise in the income and consequently in the profit of the Trust. The argument of good work done by the charged trustees and the charge amount is comparatively meagre amount, has been rejected by the JCC. He has held that lapses on the part of trustees involves minor financial implication, can be no justification. The JCC has also rejected the argument that the acts of commission or omission for which charges have been framed were essentially error of judgment or a business mistake. Instead, the JCC observed that a casual approach, omission to take immediate steps to cure the defects, if singular in number, can be excused but the repeated acts occurring every year in one or other form, which results in loss to the Trust will have to be viewed differently. The JCC has referred to the charges framed which prima facie evince the approach and attitude of the charged trustees and held that there is repetitive misuse of the Trust

fund on different occasion by different means. According to the JCC, these acts, leave cumulatively, even individually, cannot be termed as minor lapses. It went on to observe that the magnitude of the charges is amplified, if they are considered in totality.

16. The JCC then proceeded to examine the argument that there was no likelihood of misuse of the powers by the trustees. In that, the accounts and other record is already submitted in his Office. Thus, there could be no tampering of this evidence and that there was presence of other trustees on record, completely excluding the possibility of further misuse of powers. Even this argument of the charged trustees did not appeal to the JCC. While considering the said argument, the apprehension expressed by the Applicant on the basis of the events unfolding after passing of the order by Court such as issuance of cheques which however, was claimed as not delivered or despatched. At the same time, the JCC was conscious that the report of Shri Halbe, former Judge of this Court, who was appointed as Joint

Administrator was not relevant to decide the question in issue regarding suspension of the charged trustees. The JCC has adverted to the grievance made by the Applicants that payment of Advocates' fees from Trust fund for fighting personal litigation of the charged trustees but has noted that that grievance will have to be considered at the appropriate stage as was observed in the order framing charge dated 3rd June 2008. The JCC, however, has noted that the fact that the cheques were prepared, was indisputable. The same were prepared, obviously to be delivered. He held that the fact that the same were not delivered was of little consequence. This is one of the factum which has weighed with the JCC about the possibility of further misuse.

17. The JCC has then considered the argument that the suspension of the trustees would be against the interest of the Trust and that, the charged trustees were in fact the main pillars of the Trust. This argument has been rejected on the opinion that no body was indispensable and that looking to the consequence which the charged

trustees are facing, others will learn lesson and act with more care and diligence and in the interest of the Trust.

18. After having analysed all these aspects, the JCC proceeded to hold that allowing the charged trustees to continue in the management during enquiry, will have adverse effects. There is likelihood of their taking further decisions for their benefits, there may be repetition of past errors and lapses. That some of the witnesses may be employees of the Trust and the hospital. That they would be reluctant to come forward and give evidence against the persons who are holding posts as trustees. This is the satisfaction recorded by the JCC to justify the necessity of placing the charged trustees under suspension.

19. The JCC has then considered the subsequent conduct reflected from the letter sent to the Heads of the Department by the charged trustees in response to the circular issued by Shri Halbe to hold that the circumstances do not inspire confidence in one's mind that further functioning

of the Trust would be smooth and would be in the interest of Trust if continued in the hands of the charged trustees. It has also observed that the genuineness about the letter issued by Mr.Suresh Motwani filed with Application (Exhibit 99) cannot be brushed aside lightly.

20. The JCC then proceeded to consider the argument advanced at the instance of Respondent No.8 before him/Respondent No.3 herein who has virtually blamed his father for the situation, which argument was pressed to persuade the JCC that he had no concern with the acts of commission and omission committed by the Petitioners herein. This argument has been rejected.

21. It is on the above basis, the JCC summed up that considering the gravity of charges, likelihood of further misuse of powers and likelihood of influencing the witnesses and tampering with the evidence, smooth enquiry and smooth functioning of the Trust, it was necessary to suspend the charged trustees during the pendency of enquiry.

22. On careful and close analysis of the order passed by the JCC which is impugned in this Petition, in my opinion, it is not a case where any material argument of the charged trustees have been overlooked and not adverted to. Whereas, all aspects of the matter have been carefully considered and answered. By no standards, the order under Appeal can be said to be a mechanical order. I have no hesitation in taking the view that it is a well considered opinion and satisfaction recorded by the JCC keeping in mind all relevant aspects of the matter. The JCC has clearly recorded the basis on which satisfaction has been reached that it was necessary to place the charged trustees under suspension during the pendency of the enquiry. The view taken by the JCC cannot be said to be either perverse or manifestly wrong. All relevant factors have been adverted to and have been duly considered by the JCC.

23. Indubitably, the power to be exercised by the JCC under Section 41D(3) of the Act is a discretionary power. Indeed, merely because the

power exists, the JCC cannot mechanically exercise that power. In the present case, every point raised on behalf of the charged trustees has been noted and considered by the JCC. Assuming that there is some error here or there, that cannot be the basis to interfere with such a well considered discretionary order passed by the JCC upon recording satisfaction about the necessity to do so. I have no hesitation in taking the view that the discretion exercised by the JCC is replete of judicial conscience and his satisfaction on relevant matters. The view taken by the JCC is not only a possible view, but the only view that could be taken in the fact situation of the present case.

24. Notably, it is not a case as if the mistake committed by the JCC is incapable of correction. The wrong done to the charged trustees, if any, would be set right and their rights and equities adjusted at the appropriate stage in the main application (proceedings). If the said application was to be rejected upon discharge of the trustees of charges framed against them, as a necessary corollary, the charged

trustees who have been suspended under the impugned order, will have to be reinstated as trustees of the Trust. Even if the decision of the JCC on the main application was to be adverse, the wrong caused to the charged trustees on account of suspension during the pendency of the enquiry, if any, would be set right or rights and equities adjusted in Appeal to be preferred by them at the conclusion of the proceedings. If such is the situation, the Court ought to be loath in exercising writ jurisdiction. It will be useful to recall the dictum of the Apex Court in the case of **Surya Dev Rai v. Ram Chander Rai & Ors.** reported in (2003) 6 SCC 675. In Paragraph 39 of the said decision, the Apex Court observed thus:

"If it intervenes in pending proceedings there is bound to be delay in termination of proceedings. If it does not intervene, the error of the moment may earn immunity from correction. The facts and circumstances of a given case may make it more appropriate for the High Court to exercise self-restrain and not to intervene because the error of jurisdiction though committed is yet capable of being taken care of and corrected at a later stage and the wrong done, if any, would be set right and rights and equities adjusted in appeal or revision preferred at the conclusion of

the proceedings. But there may be cases where "a stitch in time would save nine". At the end, we may sum up by saying that the power is there but the exercise is discretionary which will be governed solely by the dictates of judicial conscience enriched by juridical experience and practical wisdom of the judge."

(emphasis supplied)

25. The question is: whether the present case falls in the excepted category. In my opinion, the answer is an emphatic 'NO'. Indeed, the order of suspension may result in deprivation of the Petitioners to act as trustees during the pendency of the enquiry, but that is inevitable. More so, in the backdrop of the finding and satisfaction recorded by the JCC, which I am disinclined to interfere with. Significantly, the Petitioners have already carried the matter before the Division Bench by way of Letters Patent Appeal questioning the correctness of the order dated 3rd June 2008 framing charges against the nine trustees including them. If the said Appeal were to succeed, it would necessarily follow that the question of suspending the Petitioners as trustees may not arise. However, in the face of the charges already framed, if that order were to be upheld even by the

Division Bench of this Court, keeping in mind the gravity thereof and the possibility of enquiry or investigation being influenced and of further loss to be caused to the Trust due to likelihood of the charged trustees taking further decisions for their benefits, the question of allowing the Petitioners to discharge their functions as trustees of the Trust during the pendency of the enquiry cannot be countenanced.

26. It has been rightly noted by the JCC with reference to the exposition of the Apex Court that each case has to be considered on its own facts and no general law can be laid down on the issue of suspension of a charged trustee during the pendency of the enquiry. The suspension would be step-in-aid to the ultimate result of the investigation or enquiry. In the context of the proposed action to be eventually taken against the charged trustees, it would be necessary to avoid further injury or loss likely to be caused to the Trust property/funds. By suspending the charged trustees, whose complicity has been prima facie noticed in respect of serious charges on the basis

of material already made available before framing of charges, it would be in the general interest of the Trust and its beneficiaries to place them under suspension. In the case of **Sri Digyadarsan Rajendra Ramdassjivaru (supra)**, the suspension of a Madadhipathi during the enquiry was one of the issue and whether power to suspend is necessary and reasonable part of the procedure was considered by the Apex Court. While examining that aspect, the Apex Court has noted that if such a person (the charged trustee) was allowed to function during the pendency of an enquiry, the entire purpose of the enquiry might be defeated. It opined that such person during the pendency of enquiry may do away with most of the evidence or tamper with the books of account or otherwise commit acts of misappropriation and defalcation in respect of the properties of the Math, for which, it was essential to make a provision for suspending him till the enquiry concludes and an order is made either exonerating him or directing his removal. The Apex Court upheld the order of suspension of the charged trustee in that case on the finding that the enquiry pending against the Petitioner was in

respect of serious charges of misappropriation and defalcation of trust funds and of leading an immoral life which were being investigated. Reference has been rightly made by the JCC to the unreported decision of the Division Bench of our High Court in the case of **Gulabsing Dipa Chavan (supra)**. The Division Bench has noted that Section 41D(3) clearly enables the Charity Commissioner to place the trustees under suspension pending disposal of the charges. The argument that hearing was required to be given to the Petitioners before order of suspension was passed has been rejected in the following words:

"6. Mr.Dalvi then contended that the petitioners, who are the trustees and were holding the office at the time of the passing of the impugned order, were not served with any notice by the Joint Charity Commissioner. It was urged by the learned Counsel that the Joint Charity Commissioner was in error in passing the order without any notice to the petitioner and thereby the principles of natural justice are violated. Mr.Dalvi, therefore, contends that the interim order passed by the Joint Charity Commissioner should be set aside. It is impossible to accept the contention of the learned Counsel for more than one reason. Firstly, the Act nowhere makes a provision of issuance of a notice prior to the passing of the interim order of suspension

under sub-section (3) or of the appointment of a fit person to discharge duties under sub-section (4) of section 41D of the Act. Apart from that, it must be remembered that the Joint Charity Commissioner exercised the powers of suspension only in the cases where he is satisfied that the trustee or the Board of Trustees are mismanaging the affairs of the trust and causing loss to the interest of the trust. In cases of such a serious nature, if the Charity Commissioner issues notice prior to the passing of the order under sub-sections (3) or (4) of sec.41D, then obviously the trustees who are mismanaging the trust would have an opportunity to do away with the trust property and the purpose of enquiry would be defeated. In the case in hand, the allegations made against Jadhav are of such a serious nature that giving an opportunity either to Jadhav or to other trustees who are alleged to be aiding and abetting Jadhav in his acts of misfeasance would really defeat the purpose of making an order of suspension and appointing a fit person to discharge the duties. In our judgment, the Joint Charity Commissioner was justified in passing the order without issuing any notice to the petitioners. In this connection, it must also be mentioned that on behalf of the Joint Charity Commissioner, a return has been filed by Smt.Kelkar, the Superintendent in the office of the Charity Commissioner, and in the affidavit, Mrs.Kelkar specifically stated that the petitioners are not the present trustees and their names do not appear in Schedule I under section 17 of the Bombay Public Trusts Act. Smt.Kelkar has specifically stated that the change report has not been made to the Charity Commissioner and as such the petitioners are not recognized as trustees. If the petitioners are not recognized as trustees, then the grievance of Mr.Dalvi that there was no notice of the order

passed by the Joint Charity Commissioner loses its substance." (emphasis supplied)

27. This decision would be relevant also to reject the argument of Respondent No.8 (Respondent No.3 herein) that he should be extricated from the proposed action and more particularly suspension during the pendency of the enquiry. As a matter of fact, the said Respondent has not challenged the order of suspension but that was the argument advanced on his behalf even before the JCC which has been rightly rejected on the finding that the management was under the control of Petitioner No.1 herein and Respondent No.3 had converted himself to the secondary position.

28. The charges "as framed" against the Petitioners and other trustees are indicative of the involvement of the concerned Trustees not only for breach of duty, but their actions have been actuated by malice or bad faith. If these charges were to be eventually established, there is no reason to doubt the satisfaction recorded by the JCC that there is possibility of further loss to be caused by the charged trustees and it was necessary

to keep them away from the trust management so as to prevent any further loss to the Trust.

29. Significantly, the JCC has adverted to the subsequent conduct of the charged trustees in preparing fresh cheques immediately after the restriction order was vacated. The JCC has rightly observed that the fact that the said cheques were not actually delivered, does not take the matter any further. It nevertheless, is good reason to infer that the charged trustees were waiting for the opportune moment to make payment. In this context, it was argued that payment which was to be made was in respect of professional fees to be paid to lawyers who were attending litigation for and on behalf of the Trust. On the other hand, it was argued by the Counsel for the Respondent No.1 that the payment was not in respect of professional fees to represent the Trust, but, in fact, was to handle the personal litigation of the charged trustees and which payment runs into "couple of crores" of rupees and is not a legitimate spending. It is not necessary for me to address the controversy as to whether payment already made or to be made towards

professional fees is or was in fact towards litigation handled for and on behalf of the Trust or the personal litigation of the charged trustees. Indeed, if it were to be found that all or any of the litigation was nothing but personal litigation of or against the charged trustees and they were liable to defend themselves on their own and not from the funds of the Trust, obviously, it will have to be held that any such amount paid towards that head would be unauthorised and illegitimate. On that finding, the concerned charged trustees would become jointly and severally liable to make good commensurate amount paid from the corpus of the Trust. That aspect will have to be decided at the appropriate stage, if raised in the pending proceedings or arises in any other proceedings initiated for that purpose. It was argued that the professional fees though appear to be substantial one, was necessitated on account of several proceedings pending before different forums. In that, about 22 main proceedings are pending before the Supreme Court, 29 before the Bombay High Court, 6 Suits before the Bombay City Civil Court, 18 before the Charity Commissioner and 4 before the

Court of Chief Metropolitan Magistrate. At the cost of repetition, I would observe that if it were to be held that any amount paid or to be paid towards professional fees was or is to defend the Trust as such, the same would be permissible one; whereas, if paid to defend the proceedings in respect of any of the personal litigation of the charged trustees that may be impermissible spending from the Trust funds and will have to be recovered from the charged trustees personally, jointly and severally.

30. Be that as it may, no fault can be found with the opinion recorded by the JCC that the subsequent conduct of producing the letter purportedly sent by Suresh Motwani filed along with application (Exhibit 99), arguments regarding genuineness thereof cannot be brushed aside lightly. This observation is in the context of the stand taken by the Applicant/Respondent No.1 herein that the said document is a fabricated document for more than one reason. Firstly, where, when and between whom the alleged negotiations took place and under whose instructions such negotiations were

held is not forthcoming. This objection is significant in the context of the fact that Mr.Suresh Motwani is admittedly a proclaimed offender. If he is a proclaimed offender, it was necessary to explain the circumstances in which the discussion was held with him by the charged trustees. What is relevant for our purpose is, that the contents of the said letter would reveal that some deliberations were held in relation to the claim amount ascribable to charge No.1. Suffice it to observe that if the argument of Respondent No.1 regarding genuineness of this document is to be eventually accepted, it would necessarily follow that the charged trustees have made attempt of creating evidence to be used in their defence to answer the charge already framed. That cannot be countenanced. Further, if it is to be held that this letter is a fabricated document, the argument of the Petitioners that if the arrangement referred to in the said communication is to be acted upon, no loss would be caused to the Trust, will have to be stated to be rejected. Assuming that the arrangement provided for in the said communication were to be acted upon, that

would not necessarily lead to an inference that the charged trustees are fully extricated of charge No.1 for their acts of commission and omission thereof. Those are matters to be answered in the pending enquiry.

31. For the time being, the opinion recorded by the JCC that there is likelihood of influencing the witnesses and tampering with the evidence is reinforced from at least abovesaid two subsequent conduct of the charged trustees referred to by the JCC is a possible view. The JCC has also adverted to the letter issued to the Heads of the Department in response to the Circular of Shri Halbe. According to the Petitioners, there was nothing wrong in issuing such letter to the Heads of the Department because the Joint Administrator was appointed only to look after the management of the hospital and the Research Centre and not to dabble with the affairs of the management of the Trust as such. This argument is an attempt to over simplify the matter. The satisfaction recorded by the JCC is that if the charged trustees were allowed to preform as trustees, there was likelihood of

influencing the witnesses as they would not come forward to depose against the trustees. It was argued that the JCC has placed reliance on report submitted by Shri Halbe which did not depict correct facts and was biased. It was argued that another Single Judge of this Court had occasion to consider the question regarding improper conduct of the said Joint Administrator and to replace him by appointing another Joint Administrator in his place. This argument is of no avail. I am in agreement with the argument of the Respondent No.1 that the JCC in Paragraph 67 has made it amply clear that criticism of the said reports submitted by Shri Halbe were not relevant to decide the question in issue.

32. Taking overall view of the matter as aforesaid, the satisfaction recorded by the JCC in the order impugned in this Writ Petition is a possible view, for which reason, no interference in exercise of writ jurisdiction is warranted.

33. Counsel for the charged trustees had argued that although charges have been framed, the

same were untenable. This argument has been considered by the JCC in Paragraphs 44 to 56 and in my view rightly rejected. It was suggested that hearing of the present Petition ought to be deferred till the decision of the Appeal Court on the issue regarding correctness of the order framing charges against the Petitioners is rendered. This argument will have to be turned down at least for two reasons. Firstly, the issue regarding framing of charges and to pass order in exercise of powers under Section 41D(3) of the Act both are separate matters. The fact that appeal against the order framing charges is pending, does not preclude one from considering the issue of suspension of the charged trustees during the pendency of the enquiry. That power flows from Section 41D(3) of the Act. The Division Bench of our High Court in the case of **Gulabsingh Chavan (supra)** has observed that it is open to the Charity Commissioner to "simultaneously" suspend the trustee against whom charges are framed and that too without issuing notice to such person. As a matter of fact the suspension order ought to have been passed simultaneously with the order of

framing charges against the concerned Trustees. In any case, the orders passed by the Division Bench in the pending appeals which are reproduced hitherto, in no way, preclude the consideration of the present Petition. It is for that reason, the matter was proceeded and fully heard by consent.

34. Reverting to the argument that there are enough safeguards and it was not necessary to place the charged trustees under suspension during the enquiry is concerned, it is noticed that this argument has also been considered by the JCC and rightly negatived. The JCC has recorded his satisfaction on the basis of tangible factors that having regard to the gravity of charges framed and the likelihood of further misuse of powers and likelihood of influencing the witnesses and tampering with the evidence it would be necessary for the purpose of smooth enquiry and smooth functioning of the Trust to suspend the charged trustees. No interference with that satisfaction is warranted in exercise of writ jurisdiction.

35. Even the grievance of the Petitioners that

the Trust will not be in a position to meaningfully function in absence of the charged trustees who are the main pillars of the Trust has been considered and rightly rejected by the JCC in Paragraphs 77 and 78 of the impugned Judgment. The view so taken is the correct view that no one is indispensable and when one goes out, somebody would take his place and the functions of the Trust will continue. The argument also overlooks that besides the Petitioners, there are other trustees who would continue to discharge their duties as trustees. In that, besides Respondent No.1, there are other trustees who are capable of continuing with the activity of the Trust which aspect has been considered in Paragraph 84 in the context of argument of order to be passed in exercise of powers under Section 41D(4) of the Act. The JCC has recorded that the Trust Deed provides for minimum number of only three trustees. Besides the charged trustees, there are some more trustees who are competent to perform functions as trustees and they can function and administer the Trust. I am in agreement with the said view expressed by the JCC. It is not the case of the Petitioners that

excluding the suspended and resigned trustees, the requirement of minimum three trustees will not be fulfilled.

36. Accordingly, no case for interference in exercise of writ jurisdiction against the discretionary and well reasoned order passed by the JCC is made out, for which reason, the Petition should fail.

37. While parting, I would once again clarify that this decision may not be construed as expression of any opinion either way in relation to the controversy of payment of amount towards professional fees whether it results in entering into any financial transaction or for that matter, being impermissible payment made to handle the personal litigation of the charged trustees. All questions in that behalf are left open, to be considered at appropriate stage, if raised in the pending proceedings or would arise in any other proceedings.

38. It was argued by the Counsel for the

Respondent No.1 that even payment made towards professional fees to handle the personal litigation of the charged trustees from the funds of the Trust would amount to entering into financial transaction and such transaction is in breach of restriction placed by this Court in its decision dated 9th September 2008 of taking prior approval of the JCC, thereby, disentitling the Petitioners from any relief, much less, in exercise of extra ordinary jurisdiction in Writ Petition. As aforesaid, it is unnecessary to burden this Order any further, as I am not examining the question as to whether the payment of professional fees would result in financial transaction and/or is impermissible. I may also clarify that the enquiry pending before the JCC will have to proceed on its own merits uninfluenced by any observation made at this stage either for framing of charges or to suspend the charged trustees during pendency of the enquiry. For, the charges and all aspects relevant thereto will have to be eventually answered on the basis of material that would come on record during the enquiry on its own merits.

39. For the reasons already recorded in the earlier part of this Order, no interference is warranted in exercise of writ jurisdiction. Hence, dismissed with costs.

40. At this stage, Counsel for the Petitioners submits that the operation of the suspension order be stayed for a period of two weeks from today to enable the Petitioners to carry the matter in appeal. Counsel for the Respondent No.1 has opposed this prayer on the argument that interim protection granted by the Division Bench is already operating in favour of the Petitioners. The Counsel for the Respondent No.1 further submits that in the event, the Letters Patent Appeals which are already pending in this Court were to be dismissed before two weeks, an anomalous situation would arise because of the protection given under this order to the Petitioners would enure even thereafter. This argument is misplaced. In that, the decision to be arrived at on the pending appeals by the Division Bench would be in relation to question of appropriateness of framing charges against the charged trustees; whereas, the present

challenge is in respect of order passed under Section 41D(3) of the Act suspending the charged trustees during the pendency of the trial which is a separate matter. It is, therefore, clarified that the suspension order qua the Petitioners herein shall remain in abeyance for a period of two weeks from today subject to the restriction specified in Order dated 9th September 2008 passed in Writ Petition No.5732 of 2008 is observed by the Petitioners.

A.M.KHANWILKAR, J.