
2005 eGLR_HC 10006400,2006 AIR Guj. 9 ,2005 (9) GHJ 613 ,2006 AIHC 560

Before the Hon'ble MR K M MEHTA, JUSTICE

RASHMIKANT CHAGANBHAI PATEL Vs. JOINT CHARITY COMMISSIONER

SPECIAL CIVIL APPLICATION No: 11563 of 2004 , Decided On: 23/05/2005

(A) *****

Nanavati Associates, Mamta Vyas

MR. K.M. MEHTA, J.,

1. Rashmikant Chaganbhai Patel, petitioner, one of the sitting members of the Executive Committee of Shri Dharmaj Kalavani Mandal, a Public Trust registered under the provisions of the Bombay Public Trusts Act (hereinafter referred to as "the Act"), has filed this petition with a prayer that this Court may issue a writ of certiorari or any other writ, order or direction quashing and setting aside the impugned order dated 10-8-2004 passed by respondent No. 1, Joint Charity Commissioner, Vadodara, under Section 41-A of the Act in Judicial Miscellaneous Application No. 13 of 2004 produced at Annexure-J to the petition.

2. The facts giving rise to this petition are as under :

2.1 There is a trust, namely Shri Dharmaj Kelavani Mandal (hereinafter referred to as "the trust") registered under Registration No. 65 under the Act. The main object of the trust are as under:

(i) To spread education in primary, secondary, commercial, industrial and agricultural faculties to take necessary steps for educating people for psychological, physical and moral education in the village of Dharmaj.

(ii) To collect funds and administer the same for the above object.

(iii) To administer other public institutions of the village.

2.2 The said trust was registered as Public Trust under the Act and its constitution was approved by the General Meeting on 10th January, 1950. From the record it appears that the said constitution was amended in the year 1952 and thereafter in the year 1956. The petitioner has produced Constitution of the said trust. It may be noted that clause 14 of the Constitution provides enactment of bye-laws, Clause 14 of the Constitution has been produced at page 55 of the paper book.

2.3 It is the case of the petitioner that the Constitution of the trust was amended and as per clause 7, the Constitution relating to the strength of Executive Committee was changed and provided as follows :

2.4 Patron 2, Vice-Patron 2, Donors 2, General members 4, Bandhu 2, Life Members 4 aggregating in all 16 members. Over and above, there will be President of the Mandal, Vice President, Treasurer and Supervisor.

2.5 It is the case of the petitioner that on 6-7-2004 notice regarding holding of election of office bearers of the Executive Committee of the trust was issued by the Election Officer of the trust inter alia giving the details of the Election Schedule and the date of holding election. It appears that pursuant to the said notice certain members were elected uncontested. However for certain categories election has to be done.

2.6 It is the case of the petitioner that as per the record respondent No. 4 Shri Kamlesh Chhotabhai Patel filed application before respondent No. 1 Joint Charity Commissioner under Section 41-A of the Act for certain directions. The said application was treated as Judicial Misc. Application No. 13 of 2004 which is on page 22 of the paper book. As per the said application he has pointed out certain irregularities in conduct of the election of the trust which was to be held on 1-8-2004 as per the earlier notice because by that time certain election process started.

2.7 In view of the aforesaid application Shri Vikrambhai Ambalal Patel, Secretary of the trust addressed letter dated 30-7-2004 to respondent No. 1 wherein he has also admitted that the application filed by Shri Kamlesh Chhotabhai Patel has some substance and prayed that the election which has to be held on 1 -8-2004 be cancelled and he has no objection. He has stated that he has addressed this letter after obtaining meeting of all trustees. The said application is on page 30 of the paper book. One S. R. Patel, President of the trust also filed similar application on 30-7-2004 pointing out certain defects in relation to election of the trust which is produced on page 31 of the petition. Thereafter, the trustees have also issued public notice on 31-7-2004 with an information that in view of the complaint it is decided to postpone the election of 1-8-2004.

3. Pursuant to the aforesaid application on 28-7-2004 the Joint Charity Commissioner heard the matter wherein Kamlesh Chhotabhai Patel was also present. The President of the trust Shri Surendra R. Patel, the Secretary Shri Vikrambhai Ambalal Patel of the trust, remained present. The

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Election Officer has also remained present. The Charity Commissioner has considered all these facts which I have set out and ultimately accepted the application of the applicant and decided to postpone the election of 1-8-2004 and gave the following directions :

Application No. 13 of 2004 to be allowed. Notice issued on 6-7-2004 for holding election on 1-8-2004 is contrary to the constitution of the trust and thereafter he has directed that the trust as well as the President and Secretary of the trust to consider the provisions of the Act and thereafter consider the legal position and decide to hold election. The said order has been passed on 10-8-2004.

4. Being aggrieved and dissatisfied with the said order the present petition has been filed before this Court on 8-9-2004.

4.1 It may be noted that thereafter the matter reached for hearing before this Court and on 1st October 2004, this Court admitted the matter and fixed it for final disposal. Learned advocate Mr. K. B. Pujara has requested that this petition pertains to a trust which runs about 18 to 19 education institutions and because of the pendency of the petition, trust is not able to take up any policy decision regarding recruitment/appointment of teachers and staff in the education institutes. This being a summer vacation and those institutes will start from June 2005, if this petition be disposed of earlier, the trust can take any decision in accordance with law. That is how I have heard the matter for final disposal.

5. Mr. S. I. Nanavati, learned Sr. counsel with Mr. Bhatt, appearing on behalf of the petitioner has assailed the order of the Charity Commissioner on various grounds. The learned counsel has submitted that the entire proceedings before the Charity Commissioner is illegal and contrary to the constitution of the trust. Petitioners have also alleged that the members of the trust have entered into collusion with respondent No. 4 and therefore the aforesaid proceedings have been only postponed.

6. The learned Sr. counsel has invited my attention to Section 41-A of the Act which reads as under :

Section 41-A Power of Charity Commissioner to issue directions to trustees and other persons :

(1) Subject to the provisions of this Act, the Charity Commissioner may, from time to time, issue directions to any trustee of a public trust or any person connected therewith to ensure that such trust is properly administered and the income thereof is properly accounted for or duly appropriated and applied to the objects and for the purpose of the trust.

(2)It shall be the duty of every such trustee and person to comply with a direction issued to him under sub-section (1).

7.After relying on the said provision the learned counsel submitted that under the provisions of the said Section the Charity Commissioner should relate only to administration of the public trust or for proper according or for appropriate application of the income to the objects of the said trust and such direction could be issued only in respect of the matter falling under Sections 32 to 41 of the Act and not beyond that because whatever loss or damage to the trust is likely to happen that could be sequel to the provisions under Sections 32 to 41 of the Act.

8.Relying on the aforesaid provisions the learned counsel submitted that election of trustees and/or office bearers of the trust is wholly beyond the purview of the provisions of this Section and hence respondent No. 1 has no authority or right of any nature whatsoever to pass any direction interfering with the process of election to be held for election of the office bearers and other members of the Executive Committee,

9.The learned counsel further submitted that the Charity Commissioner has gone beyond the scope of the said Section and therefore the impugned order is liable to be quashed and set aside.

10.The learned counsel for the petitioner has, thereafter, also invited my attention to the fact that the petitioner has filed rejoinder on 25-10-2004 against the affidavit filed by the respondent wherein the petitioner rejected the legality of the election and the same is contrary to the constitution of the trust. He reiterated that there was a collusion between respondent Nos. 3 and 4 original complainant before the Charity Commissioner.

11.The learned counsel for the petitioner has invited my attention to the fact that the petitioner has also filed one Civil Application 8884 of 2004 in the present matter with a prayer that this Court may pass an appropriate interim order restraining respondent Nos. 2 to 5 from taking any policy decision or making any appointment of the teachers and other staff members during the pendency of the present petition and direct them to attend normal day-to-day routine work in the interest of the institution. On the said application my learned brother Mr. Justice M.R. Shah passed order on 4-11-2004. In view of the same, nothing remains to be done as far as this Civil Application is concerned.

12.From the record it appears that the petitioner has also filed Civil Application No. 911 of 2005 with a prayer that this Court may permit the petitioner to amend the petition being Special Civil Application No. 11563 of 2004 by permitting to add paragraph Nos. 15-A, 15-AA and 15-AAA in the said matter. In para 15-A he has made allegations against respondent Nos. 2 and 3 who have collided with respondent No. 4 for filing the application under Section 41-A of the Act before respondent No. 1 being Judicial Misc. Application No. 13 of 2004 and thereafter raised the contention that the impugned order is arbitrary, mala fide and bad in law.

13. In para 15-AA he has also submitted that respondent No. 1 has passed order without proper application of mind and therefore it is vitiated with oblique purpose and therefore the order deserves to be quashed and set aside.

14. In para 15-AAA the petitioner has prayed to join respondent No. 6 Shri B. P. Hadia, Joint Charity Commissioner in his personal capacity as party respondent No. 6 in the Special Civil Application. The said Civil Application was filed on 16-2-2005.

15. Mr. Bhatt, learned advocate appearing on behalf of the petitioner has submitted that respondent Nos. 3 and 4 colluded with respondent Nos. 1 and 2 and therefore these proceedings have been initiated. He has invited my attention to the fact that the application was made by respondent No. 4 on 28-7-2004 and an application was filed on 31-7-2004, the Charity Commissioner has issued notice by personal notice which the Charity Commissioner granted and notice was issued on 31-7-2004. The Resolution passed by the trust dated 31-7-2004 in which respondent No. 4 was already there in which they decided to postpone the election of 1-8-2004. Even the Secretary has also filed application on 30-7-2004 and the President of the Trust has also filed application on 30-7-2004. Thereafter on 31-7-2004 notice has been issued and ultimately the impugned order was passed on 10-8-2004. The learned counsel for the petitioner states that these proceedings show that respondent Nos. 3 and 4 have colluded with respondent Nos. 1 and 2 and the present order has been passed. He has further stated that not only that he has made further application No. 911 of 2005 in which he has made allegations against the Charity Commissioner, Baroda in his personal capacity namely Shri B. P. Hadia and therefore he has prayed that B.P. Hadia may be joined in his personal capacity and the said application is filed on 16-2-2005.

Reply on Behalf of Respondents :

16. As indicated earlier on behalf of respondent No. 1 Mr. Mukesh Patel, learned A.G.P. appears and on behalf of respondent Nos. 2 and 3 Mr. Kaushik Pujara with Ms. Mamta Vyas, learned advocates appears. The learned counsel has stated that the contention raised by the petitioner is misconceived in law and liable to be rejected. The learned counsel has invited my attention to the affidavit filed by the respondent dated 19-10-2004. The learned counsel has also invited my attention to another salient features which I have also mentioned earlier.

17. The learned counsel has pointed out that since the trust was established in the year 1950 till today no election is held of the Executive Committee. The trust is running about 19 education institutes. He has invited my attention to the petition filed before the Charity Commissioner dated 31-7-2004 which I have referred to earlier.

18. The learned advocate has invited my attention to the notice by which the trustees have decided to convene a meeting on 5-8-2004 which is on page 82 of the paper book and thereafter the minutes of meeting of 5-8-2004 in which it was decided to constitute a new committee and new administrative committee of the trust. From the record it appears that in the said meeting Rashmikant Chhaganbhai Patel was also present who is petitioner before this Court.

19. The learned counsel further submitted that in view of the general feeling of the members to avoid the election, soon after 1-8-2004 an agenda was circulated for the meeting which was scheduled to be held on 5-8-2004 with a view to resolve the situation arising out of the litigation and in the said meeting on 5-8-2004, a unanimous decision was taken to authorise the following four persons to decide the names of the members of the new Executive Committee.

(i) Shri Jashbhai Gordhanbhai Patel

(ii) Shri Chandrakantbhai Sombhai Patel

(iii) Shri Rashmikant Sombhai Patel (petitioner)

(iv) Shri Jitubhai Tulstbhai Patel

20. The learned counsel for the respondent therefore submitted that it is pertinent to note that the present petitioner was one of the four members who were to decide the names of the Executive Committee. It was submitted that the petitioner was there in the said meeting and he was a signatory to the same. He has stated that surprisingly though the petitioner was there in the meeting and though he was also one of the members, this fact is not stated in the petition and he has suppressed this material fact and not an iota of word regarding the same is mentioned in the petition.

21. The learned counsel further submitted that thereafter again by an agenda, a meeting was scheduled on 14-9-2004 inter alia to take a decision about inclusion of amendments in the Constitution and election. A copy of the agenda is annexed with the petition at Annexure-IV. In the said meeting dated 14-9-2004 the present petitioner was also present wherein it was unanimously decided that 7 members including the present petitioner would personally meet Ms. Amruta Patel (Chairperson of NDDDB and daughter of former Finance Minister and Ex-President of the Dharmaj Kelvani Mandal Shri H. M. Patel) and would request her to accept the Presidentship of the trust and all the members would accept the Executive Committee as may be decided by Ms. Amruta Patel. The present petitioner was one of the members who were to meet Ms. Amruta Patel and signatory of the minutes of the meeting dated 14-9-2004.

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22.It was further submitted that since the present petitioner was a party to the decision to meet Ms. Amruta Patel and request her for Presidentship, the petitioner had assured the answering respondents that he will not remain present in the Court on 17-9-2004 and the answering respondents also need not to remain present and in these circumstances, the petition would either be withdrawn or dismissed for default. It is submitted that in view of the assurance given by the petitioner himself and in view of the fact that the petitioner himself was a party to the decision dated 5-8-2004 as well as 14-9-2004, the answering respondents did not appear before the Court on 17-9-2004 on the date on which the Court issued notice. Though the petitioner assured that he will not remain before the Court and requested the respondent not to appear before the Court. However, in view of breach of the tacit understanding arrived at, he remained present before the Court on 17-9-2004 and the answering respondent did not remain present and thereafter he obtained order on 1-10-2004 from the Court wherein the Court admitted the matter and directed the matter to be heard finally.

23.Respondent Nos. 2 and 3 has filed affidavit dated 26-10-2004. He has again pointed out that the trustees have decided to convene the Executive Committee of four persons where petitioner was also one of them which fact the petitioner has not divulged. The learned counsel has invited my attention to bye-law enacted as per Section 14 of the Act which is produced on page 102 of the paper book. The learned counsel has also invited my attention to Clauses (1), (4) and (6) of the bye-laws which apparently show that the notice of convening meeting and election to be held on 1-8-2004 violates some of the provisions of the bye-laws and therefore the application made by the applicant and after carefully considering the said aspect and after setting out the said issue the trustees have rightly come to the conclusion that the said notice and conclusion may violate the provisions and therefore they rightly represented before the Charity Commissioner.

24.As regards the jurisdiction aspect, the learned counsel for the respondent has invited my attention to a Division Bench judgment of this Court in Letters Patent Appeal No. 2 of 2004 in Special Civil Application No. 16051 of 2003 in the case of Navsari Taluka Halpati Shikshan Prachar Sangh v. Joint Charity Commissioner decided by this Court (Coram : R. K. Abichandani & D. H. Waghela, JJ) on 12-1-2004. In that matter after relying on the judgment of this Court in the case of Acharya Shri Mahaprabhujini Ranavaswala Bethak Mandir Trust. Godhra v. Chokshi Ratilal Chandulal reported in (1996) 3 Guj LR 307 : 1998 AIHC 1294. The learned single Judge has held that the Charity Commissioner had wide supervisory powers over a public trust to issue any direction of remedial or preventive nature to perform duty in certain manner or to refrain from performing one or other duty in certain compelling circumstances which call for interference to secure objects of the public trust by a bona fide and efficient administration. The said decision was challenged before the Division Bench. The Division Bench has referred to the decision of a Division Bench of this Court in the case of Syedna Mohamed Burhanuddin v. Charity Commissioner reported in (1992) 1 Guj LH 331 and the decision of learned single Judge in the case of Navinchandra Jasani v. Pravinchandra Jasani reported in (2003) 1 Guj LR 392 and also scheme of Section 41-A of the Act and after considering the contention of the learned counsel for the petitioner that the provisions of Section 41-A of the Act can be invoked only in context of Sections 32 to 41 of the Act, the Division Bench has observed that it is obvious that without a validly elected administrative body, even the matters falling under Sections 32 to 41 would warrant a direction on the part of the Charity Commissioner to hold elections to bring about an administrative body which

functions in consonance with these provisions. The Division Bench in para 7 of the judgment has further observed as under power of the Charity Commissioner to issue directions to ensure that the trust is properly administered is by its very nature a wide power. Administration of a trust would mean administration by a body which under the trust deed is required to administer the same. When the trust deed provides for a periodical election of the trustees for the purpose of administration of the trust and if the body is not constituted as required by the terms of the trust deed, the Charity Commissioner would have powers to give directions for holding the election as contemplated by the trust deed which will have a direct impact on the aspect of administration of the trust, because, in absence of a properly elected body as required by the trust deed, a proper administration of the trust cannot be ensured. The direction requiring an election to be held as per the terms of the trust deed would, therefore, fall within the powers of the Charity Commissioner to ensure proper administration of the trust. The administration of the trust would include various aspects which would fall under the provisions of the Act and in absence of a properly constituted administrative body, the affairs of the trust can hardly be conducted in furtherance of its objects. It is, therefore, clear that the directions to hold elections of the trustees in consonance with the terms of the trust deed would clearly fall within the ambit of Section 41-A of the Act.

25. The learned counsel therefore submitted that in view of the judgment of the Division Bench of this Court the contention raised by the petitioner that under Section 41-A of the Act the Charity Commissioner has no power and jurisdiction to accept the application of the applicant along with the trustees to postpone the election is without jurisdiction, illegal and is liable to be rejected.

26. In the said Civil Application (i.e. Civil Application No. 8844 of 2004), Respondent No. 2 has filed affidavit and specifically raised contention in the said reply that the petitioner has not made any averment regarding collusion. In fact the present respondents have pointed out as to how the matter has been proceeded and in the present Civil Application the applicant cannot allege collusion for the first time and it is an afterthought and therefore such application is required to be rejected with cost.

27. It was further submitted that all persons were already before the Charity Commissioner as they have filed necessary application and therefore the say of the applicant that respondent No. 6 namely the Joint Charity Commissioner in his individual capacity had colluded with respondent Nos. 2, 3 and 4 is clearly an afterthought. It was further submitted that respondents were always present and the applicant sought adjournment and therefore the matter could not be proceeded. It was further submitted that the present respondent No. 2 has not acted contrary to the statement made before the Charity Commissioner. However regarding recruitment no decision has been taken. Therefore, the main petition is required to be heard and decided at the earliest in the interest of justice.

28. In the affidavit the respondents have categorically denied that there is collusion between the trust and the Charity Commissioner which is absolutely false and frivolous. It was therefore submitted that though the present petitioner was present in the meeting of the trust however unfortunately he has not pointed out this fact in the petition which has been set out on page 13 of the reply. It was further reiterated on page 15 of the reply and on page 16 at para 12 of the reply.

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29.It may be noted that this Court has also called for record and proceedings from the Charity Commissioner. From the said record Mr. Mukesh Patel, learned AGP has invited my attention to original petition No. 13 of 2004 which was filed by Kamlesh C. Patel on 28-7-2004. The extract of the Register of trust, the Constitution of the Trust, bye-laws of the trust, election process which is initiated and ultimately notice and nomination form, proxy for the nomination, list of members who were to vote in the election, minutes of 6-7-2004 meeting, details of persons who are going to participate in election, the letter of the Secretary dated 24 7-2004, letter dated 24-7-2005 to Kamlesh C. Patel, order passed by the Charity Commissioner from time to time. application dated 31-7-2004, Resolution passed therein, letter from Vikrambhai Patel as well as President which I have already referred which is subject matter of trust. This record has been produced only to show that whatever has been produced by the respondent and the petitioner on the record also tallies with the original and to satisfy the conscious of the Court which I have gone through.

Conclusion & Findings :

30.I have considered the facts and circumstances of the case, I have also considered the submissions made by Mr. Pujara, learned advocate for the respondents. I have also considered the submissions made by the learned counsel for the petitioner Mr. Bhatt. I have considered the constitution of the trust, the application filed by respondent No. 3 Kamlesh C. Patel and the application filed by the Secretary as well as the President of the trust. I have also considered Clause (14) of the Constitution which provides the constitution of the committee and also bye-laws enacted as per Clause (14) and the notice issued for conducting the election. From the bye-laws it appears that the election programme announced was contrary to the bye-laws.

31.I have also perused the order of the Charity Commissioner and in my view the Charity Commissioner has given a cogent and convincing reasons while accepting application No. 13 of 2004 of Shri Kamlesh C. Patel. He has also considered the other facts which I have set out earlier, various applications filed by the President and the Secretary of the trust, his finding that the election is contrary to Clause (14) of the Constitution and other bye-laws.

32.It may be stated that one of the contentions that the Charity Commissioner cannot pass the order in connection with the election of the trust is not legal and valid in view of the judgment of the Division Bench in the case of Bethok Trust (supra), which I have referred to earlier. In view of the same, the contention of the petitioner that Charity Commissioner cannot interfere in election matter has no substance.

33.I have considered the facts and circumstances of the case and in my view, there is no substance in the contention raised by this petition in this behalf. The Charity Commissioner has passed the order legally, validly and in accordance with law. There is no infirmity in this behalf. In fact, the
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view taken by the Charity Commissioner is partly confirmed by the Division Bench judgment of this Court and this Court cannot find any infirmity in the order of the Charity Commissioner,

34.As regards Civil Application No. 911 of 2005 is concerned. I have considered the facts and circumstances of the case and I have also examined the record and proceedings of the case and I do not think the prayer prayed by the applicant in the application be granted. Hence, Civil Application No. 911 of 2005 is rejected with no order as to costs. It is not necessary to make Mr. B. P. Hadia, Joint Charity Commissioner to be party in, his personal capacity.

35.At the fag end of the hearing, Mr. Pujara, learned advocate states that in view of the various averments made by the petitioner particularly when they have made an application to make Mr. B. P. Haida as party to the proceedings in his personal capacity and when they have suppressed so many things, this Court may impose exemplary cost to the petitioner for filing such frivolous petition.

36.On the other hand, Mr. S. I. Nanavati, learned senior counsel for the petitioner stated that the petitioner has taken all legal contentions, particularly on interpretation of Section 41-A and in the facts and circumstances of the case, the said cost should not be imposed.

37.I have considered the facts and circumstances of the case and in my view, there is no necessity to impose exemplary cost on the petitioner. Hence, to that extent, the prayer of the respondent is rejected,

37.A In my view, the petitioner institute is carrying on 18 to 19 education institutes which is very laudable objective in purpose. Because, according to me, education is very important in mans life.

Education is a primary need of every human being and Literacy an indispensable tool for this purpose. We have to recognise that the aspirations and hopes of the peoples of our countries depend on the provision of appropriate systems of education. The great problems of poverty, ignorance and disease, can be addressed effectively only if we succeed in our programmes for education and literacy. An ancient Chinese saying comes to mind;

If you are thinking of one year, plant rice, if you are thinking of a decade, plant trees, if you are thinking of a century, educate the people.

(Re Dharma. A Legal Discipline. Select Speeches & Writings of Dr. Shankar Dayal Sharma. President of India) (Re : Page Nos. 85 & 86)

37.B I hope and trust that when this trust which is carrying on various education institutes, will also give good quality education to the children who are studying there.

An Institute like this is not an academic cafeteria, offering junk food for the mind. It aims at shaping and moulding students character. It not only wants to sharpen pupils skills-it wants to heighten learner awareness, to clarify scholars vision, to purify observers heart. This is education in its deepest sense.

(Re: Shri Nani Palkivala selected writings) An Article of Education for Indias Moral and Spiritual] Regeneration] Page No. 183, relevant page No. 187 with suitable corrections What is Aim of Education ?

37.C "Ultimately, education is a process of individual, social and national transformation. The question is not about taking the horse of the water or making it drink. The ideal education system is about making the horse thirsty and pointing where the water is. The horse will then learn to drink by himself."

(Re: the Welcome Address of Shri Azim Premji Report World Education Fellowship, 42nd International Conference 2004, Mumbai India] Page No. 10, relevant page No. 14

38.However, it will be open for the existing trustees to hold election within a reasonable time as per the bye-laws and the clause of the Constitution and the members as existing on 1-5-2005. The trust will hold the election and will also constitute a committee so that the trust running various institutions can appoint teachers and professors in the educational institutions during the summer vacation.

39.In the result, the petition is rejected. Rule is discharged with no order as to costs. Civil Application No. 911 of 2005 is also rejected with no order as to costs.

40.This being a summer, vacation, the Office is directed to give one copy of this judgment to Nanavati and Nanavati, learned advocate for the petitioner and to Ms. Mamta Vyas, learned advocate for respondents.

Appeal allowed

