

Important provisions of
Maharashtra Public Trust Act – 1950
(MPT Act)
Drafting of Trust Deed
&
Registration

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➤ **DRAFTING OF TRUST DEED:-**

The trust is created by an instrument contains all the necessary clauses required for the smooth management and running of the trust including the objects for which the trust is created and the vesting of powers to the Trustees.

The trust can be created by three common modes –

- 1) Section -8 Company under Companies Act-2013,
- 2) Under Societies Registration Act-1860 with Charity Commissioner (C.C.) and
- 3) Under Maharashtra Public Trust Act-1950 with C.C. (Including by will)

The instruments created under:-

| | |
|----------|--------------------------------------|
| Sec-8 Co | - MOA and Articles of Association |
| Society | - M.O.A. and Rules & Regulations |
| MPT Act | - Trust Deed or Instrument of Trust. |

Today my topic is to cover Trust Deed hence I will be covering the aspects concerning to trust deed but the basic principals remains the same for the other modes.

Drafting of Trust deed or any other legal document is the most important part of the formation of a Charitable Trust since that the only document on the basis of which the trust activities are administered and the trustees derive the powers from the trust deed .

The drafting of instrument of the creation of the trust should be such that it is capable for the basic legal registration with C.C. / ROC and Income Tax Registration and further it should be capable of obtaining exemptions U/s. 80G 10 (23) (C) and U/S 35AC, 35(i)(ii) etc.

Therefore a person drafting the deed of a public charitable trust has to bear in mind several enactments, particularly the Indian Trusts Act - 1882 Maharashtra Public Trust Act – 1950, Societies Registration Act – 1860 and the Income Tax Act - 1961 and more over he has also to keep in mind the relevant judicial pronouncements under the relevant laws.

The at most care is required to be taken while drafting the trust deed because it is not only permanent document for the perpetual life of the trust but it is not easy to change the clauses of the trust deed particularly under the MPT Act and trustees are bound to act as per duties and powers conferred by the trust deed.

Trustee and Trusteeship :-

- ◆ Who can be Trustee - A person who is of a sound mind and is competent to contract.
- ◆ A legal entity, HUF and Minors can not become the trustee.
- ◆ Only individual can become a trustee.
- ◆ NRI can not become the trustee under MPT Act (But NRI can become director in a Section – 8 Company)
- ◆ A trustee can not delegate of his powers of trusteeships.
- ◆ The trusteeship is voluntary acceptance of responsibility.
- ◆ The responsibilities of the trustees are jointly and severally.
- ◆ Trustees have to act collectively known as Board of Trustees.
- ◆ The Control of the trust are in the hands of the trustees.
- ◆ A Trustee is bound to fulfill the purpose of the trust and act according to the directions of the author of the trust mentioned in the trust deed i.e. he must execute the trust and perform his duty as enumerated in the trust deed.

Essential Features of a Trust:-

To understand the concept of a trust it is essential to know the following 3 characters necessary for creation of a trust.

- 1) Settler or Author of the trust.
- 2) Trustees of the trust.
- 3) The beneficiaries under the trust.

These three parties are linked by a trust deed which documents the relationship *inter se* and *vis-à-vis* the trust property.

The care is to be taken for clear cut and specific provisions in the trust deed in relation to the all three aforesaid characters. The settlers and the trustees should be identifiable and the beneficiaries should be general or specific public which can not be identified.

The trust deed generally contains the following clauses:-

- i) Author or settler of the trust
- ii) Preamble
- iii) Trust name by which trust shall be known
- iv) Place where its office shall be situated
- v) Names of the Trustees

vi) The objects of the trust

vii) Beneficiaries.

viii) The property settled for Trust – In case of immovable property it should contain full description of the property being sufficient to identify.

ix) An express intention to transfer the trust property to the trustees.

x) Territory of the activities of the trust.

- xi) Binding clause for trustees as to spending of money and use of property only for charitable purposes.
- xii) Surplus and Accumulation.
- xiii) Minimum and Maximum number of Trustees.
- xiv) The procedure for appointment, removal, replacement of trusteeship.
- xv) Meetings of Board of Trustees
- xvi) Trustees duties and powers.
- xvii) Administration of trust.

xviii) Provision for accounting period and maintenance of accounts and audit.

xix) Clause enabling, spending and utilization of the trust income, funds and part of corpus.

xx) Bank account and operations.

xxi) Borrowing money on security (Power to mortgage) for the furtherance of the object of the trust.

xxii) Investment of the trust funds only in the name of trust and in the prescribed mode.

xxiii) Utilization of Trust properties for generating regular income to be use for charitable purposes.

xxiv) Alienation of immovable property of the trust.

xxv) Power to frame Rules & Regulations

xxvi) Amendments to the trust deed

xxvii) Amalgamation & Merger clause.

xxviii) Winding up of trust.

The most important part of the drafting of the trust deed is to draft

i) OBJECT CLAUSE:-

A) Secular Education

B) Medical Relief

C) Social Welfare

D) Relief to poor

E) General Public Utility Services

ii) POWERS OF THE TRUSTEES

There are inherent wide powers vested on the trustees being responsibility casted and voluntarily accepted by him. The trustees have all the powers to administer the trust and to conduct its activities to fulfill the object of the trust. He is expected to exercise, manage and administer efficiently the affairs of the trust and trust properties in normal course and in the interest and for the furtherance of the objects of the trust. The trustees are expected to act in prudence and as per the provisions of trust deed and within the provisions of applicable laws such as Indian Trust Act, MPT Act, Society Registration Act, Companies Act, Income Tax Act and other applicable general laws.

The Board of the trustees or Managing Committee, whatever name called, have to take collective decisions preferably unanimously or in case of difference of opinion then by majority. Once the decisions are taken and resolution is passed to that effect then it is binding on all the trustees.

Specific Powers of the trustees advisable to be included in the trust deed

Over and above the general inherent powers of the trustees it is suggested to have following specific coverage of powers either under the head power or a separate clause which are required for the trustees to have it for special need and circumstances.

- 1) Spending only for Charitable purpose.
- 2) Spending on Administration and its activity to fulfill the objects including Capital Expenditure.
- 3) To Accept Donations etc... including fund raising programs and discretion for not to accept the donations which are against the interest of the trust.
- 4) Investment of Trust Fund within the modes permitted under MPT Act & Income Tax Act.
- 5) Purchase, hire or take on lease property on rent or to repair any movable or immovable properties for carrying out the objects of the trust.
- 6) Power of sale, to dispose off, alienate, exchange.
- 7) Let out, Lease out, Use of immovable property including termination.
- 8) Appointment and termination of professionals & other staff.
- 9) Power to Alter, Add, Delete or Modify any Clause of the trust deed including framing scheme under MPT Act.
- 10) Power to utilize part of the Corpus Fund.
- 11) Power to settle account, compromise, compound and abundant of receivables.
- 12) Power to file suits and refer to arbitration.
- 13) To apply for grants from various authorities.
- 14) Power to reimbursement of expenses.

- 15) To appoint sub committees
- 16) Opening and Operation of Bank Account
- 17) Accumulation of Surplus and Funds
- 18) Sanction the Budget.
- 19) To Conduct the activities Jointly or in co-operate with other NGOs.
- 20) Borrowing Power with or without security.
- 21) Mortgage of property.
- 22) Amalgamation, Take Over and Merger.
- 23) A General clause to have all such powers as is required in the normal course and circumstances which is expected from a prudent person.

The following important care is to be taken for drafting of trust deed / MOA.

- i) All the object clause should be Charitable in nature and wherever it is possible that the meaning of a particular clause can be construed of the nature of commercial so in that case that clause should be elaborated so that its meaning reflects the charitable nature.
- ii) While drafting the object clauses the cut and paste method from any old deed should be avoided. Every trust deed is for a separate independent trust with a particular object and intention therefore every clause is to be drafted carefully.
- iii) It is advisable that the object clauses are to be covered under the specific heading for example Education, Medical, Relief to poor etc and under each heading whatever you want to cover you can covered.
- iv) It is further advisable that minimum possible clauses necessary to be included.
- v) Only the concern clauses should be added and unnecessary clauses should be avoided.

- vi) The meaning of each clause should be clear it should not be vague.
- vii) There can be a general clause at the end that the trustees can do any activity which are in the nature of charitable purpose.
- viii) General power for spending should be permitted for any purpose which are charitable in nature.
- ix) No activity should be done out side India except with or without permission from CBDT as mentioned in Section 11(1)(c) of IT Act.

If these care in drafting of trust deed are not taken then now a days it is become very difficult to get primary registration as well as registration under Income Tax Act and to obtain exemption certificate U/s. 80G.

Registration of Trust

The registration of the trust is to be done with the concern authority of the law under which the trust is created

ROC for Section – 8 Company (Companies Act)

Charity Commissioner for Society / Association (Societies Reg. Act)

Charity Commissioner for Charitable Trust (MPT Act)

It is very important to decide under which mode a particular trust is to be registered therefore a detailed meeting should be held with the persons who wants to create a trust and according to their objects and activities the proper mode of registration should be decided.

Registration under income tax act u/s. 12AA

After the first legal registration of the trust the procedure and status under Income Tax Act are the same for each trust registered under any mode. Even all the provisions of Income Tax Act and procedure for getting exemptions are also same.

The name Bombay Public Trust Act is changed to
'MAHARASHTRA PUBLIC TRUST ACT" By Maharashtra Act
No-xxiv of 2012. Published, after having received assent of
the Governor, in the Maharashtra Govt. gazette on
22nd August, 2012.

➤ Definitions – Sec. 2

- Hindu – Includes Jain, Buddhist and Shikh.

- Person having interest – Includes, In the case of
 - a) Temple – Persons entitled to attend or attending the worship
 - b) Math – Disciple of the Math or religious persuasion to which the math belongs.
 - c) wakf – Includes a person who has right to worship in a mosque.
 - d) Society – Member of the Society.
 - e) Public Trust – Any Trustee or beneficiary.

- Public Trust – Includes Temple, Math, wakf, Church, Synagogue, Agiary place of public religious worship, Dharmada or any other endowment.
AND a society registered under Societies Registration Act, 1860

- Public Security – Means –
 - a) securities of the Central Govt. or any State Govt.
 - b) Stocks, Debentures or shares in railway or other companies, the Interest or Dividend on which has been guaranteed by Central or any State Govt.
 - c) Debentures or other securities for money issued by or on behalf of any local authority in exercise of powers conferred by an Act of Central or State legislature.
 - d) A Security expressly authorized by an order of State Govt. in this behalf.

➤ **CHARITABLE PURPOSE (Section 9)**

Charitable purpose includes:-

- 1) Relief of poverty or distress,
- 2) Education,
- 3) Medical Relief,
- 3A) Provision for facilities for recreation or other leisure time occupation, if the facilities are provided in the interest of social welfare and public benefit, and
- 4) The advancement of any other object of general public utility, but does not include a purpose which relates exclusively to religious teaching or worship.

➤ **NOTES**

● Political purpose not a Charitable Purpose :

Trust for advancement of political purpose is Invalid.

The Bombay High Court decided in the case Subbas Chandra Bose v. Gordhandas P. Patel, AIR 1940 Bom 76.

● Object of General Public Utility

The expression 'Object of General Public Utility' is not restricted to objects beneficial to the whole of mankind. An object beneficial to a section of the public is an object of general public utility. It is sufficient if intention is to benefit a section of the public as distinguished from specified individual.

It has been decided by S.C. in the case of CIT v. Andhra Chamber of Commerce. (1965) 1 SC R 565.

➤ **Registration of Trust**

(Sec. 18, Rule 6)

● **Application Period:-**

Within 3 months of creation of the Trust.

● **Prescribed Form:-**

Schedule – II (Duly completely filed , Notarized and affixed Court fee stamp of Rs
100/-)

● **Inquiry for Registration**

**DYCC / ACC shall make an enquiry in the prescribed manner
for the purpose of ascertaining certain facts for registration.**

➤ **NOTES**

1) It is the duty of the trustees of a public trust to which the act applies to make an application for the registration of the public trust U/s. 18.

[Charity Commissioner v. Administrator Shrinrgiri Math, (1969) 71 Bom. LR 678 : (1969) 1SCRW 993 : 1969 Mh. L. J. 588 : AIR 1969 SC 566 : (1969) 1 SCJ 906 (SC) : Keki Pastonji v. Rodabai, (1971) 74 Bom LR 198 (FB)].

2) The Bombay High Court held that Shrinegiri Math, which is primary and main institution situated in Mysore territory, is not liable to be registered under this act, although some portion of the properties (three properties) are situated at Nasik within the jurisdiction of ACC Poona.

[Abhinava Vidya Tirth v. Charity Commissioner, 65 Bom. LR 457 : AIR 1967 Bom. 194]

3) Math once found to be private it cannot subsequently become public unless there is clear dedication math for public.

[Hari Bhanu Maharaj of Baroda v. Charity Commissioner, 1987 Mah. L.R. 106 (SC)]

4) Public Trust for the object of Spiritual and religious Teaching :

No worship activity in the premises of Trust.

[Ramgiri Gurudattagiri Gosavi and anothers v. Aba Ali Mulani sinc deceased by his legal heirs and others, 2005 (1) Mh. L. J. 39, 2005 (1) All MR 429, 2005 (2) Bom. C. R. 408]

➤ **FEW CASE LAWS FOR INQUIRY FOR REGISTRATION**

1) **Burden of proof**

The onus of proving the public character of temple would rest on the parties alleging that the trust properties held for the public purpose.
[Ramasarandas v. Jairamdas, AIR 1943 Pat 135]

2) **Issuance of Public Notice**

The Bombay High Court held that public notice once issued, no necessity of individual notice to the parties.
Lady Soonoo Jamsedji v. Jamsedji Ebulji Dastoor, 1996 (4) All MR 556.

3) **Property of Public trust :**

Once the Finding has become final, agitation against is not proper.

[Trustees of Hareshwar Mahadev Trust v. Trustees of Shri Jasvansinghji Audichya Brahman Boarding Vidyarthi Bhavan, 1998 (1) GLR 434 : 1998 (1) GLH 127 : 1998 (1) GCD 384 (Guj)].

4) The application made by one trustee for registering the Shree Laxmi Narayan Mandir Sansthan as a Public Trust. It would make no difference whether at the relevant time rule 7-A existed or not. It was for the ACC to follow the principal of natural justice and issue notices to all the trustees.

Nathamal Tannalal Janu & Anr v. Bansilal Chandulal Janu & Anr, 2011 (4) All MR 183 (NB) 2001 (3) Bom. C. R. 745 (NB) : 2011 (3) Mh. L. J. 785 (NB).

5) Disputes regarding Title of Trust Property.

The question of title to the trust Property is outside the scope of inquiry u/s. 19.

Shree Hanuman Mandir, Alibag, Public Trust through its Trustees & Ors v.

Satishchandra Bhalchandra Gurjar & Ors, 2013 (2) AIR BOM R 1186 : 2013 (3) Mh. L. J. 83.

➤ **Registration of a trust created by will (Sec. 29)**

● **Application Period:-**

Within 1 month of granting of probate / within 6 months of Testator's death whichever is earlier

● **Prescribed Form:-**

Schedule – II (Same as earlier)

The DYCC / ACC has power to frame a scheme (Trust Deed) if the will does not contain full trust deed.

➤ **Memorandum of particulars of immovable properties**
[Sec. 18(7), Rule 6(7)]

● **Intimation Period:-**

Within 3 months of creation of the trust.

● **Prescribed Form:-**

Schedule – II-A (Same as earlier)



Change Report
(Section 22 and Rule13)

Any changes in Schedule – I are required to be reported.

● **Intimation Period:-**

Within 90 days of the occurrence of change.

● **Prescribed Form:-**

Schedule – III (Complete details of change and duly notarized)

1) Change Report :

Acquiring membership of Trust.

The simple payment of subscription does not make one member of the trust automatically, what is required to be shown is approval of such membership by the executive committee or by the General Body Meeting.

Abdul Sattar Sher Mohammad Qureshi & Ors. V. Haji Mustaq Ahmad Sher Mohd. & Ors, 2009 (1) All MR (NB) : 2009 (1) Bom. C. R. 43 (NB) : 2009 (1) Mh. L. J. 411 (NB).

2) Baun Foundation Trust Case :

Change in the Constitution of the trust.

The change in the Constitution of the Trust takes place on the date of adoption of Resolution.

Vijay Raghuram Shetty v. Baun Foundation Trust & Ors, 2011 (6) Mh. L. J. 711.

➤ **Change Report relating to Immovable property**

(Section 22(1A), Rule13(1A))

● **Intimation Period:-**

Within 90 days of the occurrence of change.

● **Prescribed Form:-**

Schedule III – A (With all property particulars and duly notarized)

➤ **Budget (Sec. 31A, Rule 16A)**

● **Intimation Period:-**

At least 1 month before commencement of each accounting year i.e in February for next year.

● **Prescribed Form:-**

Schedule – VII – A

Budget is to be filed if annual income exceeds Rs.- 5000/- in the case of public religious trust and Rs.- 10,000/- in case of other trust.

➤ **Accounts and Audit**

(Sec. 32, 33(2), 33(4), 34. Rule 17, 21)

● **Period:-**

Accounts to be audited within 6 months from close of accounting year.

● **Prescribed Forms:-**

Schedule – VIII for Balance Sheet.

Schedule – IX for Income & Expenditure.

Schedule – IX –C for Statement of Contribution.

➤ **MAINTAINANCE OF ACCOUNT**

(RULE – 17)

- 1) Every trustee of a public trust shall keep regular accounts.

- 2) Such accounts shall be kept in such form, as the case may be, approved by the Charity Commissioner and shall contain such particulars as may be prescribed.

➤ **BALANCING AND AUDITING OF ACCOUNTS (RULE 18 & 19)**

1) The accounts kept under section 32 shall be balanced each year on the Thirty First day of March.

2) The accounts shall be audited annually by a C.A. or by such persons as the State Government may authorize and no such person is in any way interested in, or connected with, the public trust, within 6 months from the close of the accounting year.

3) Every auditor shall have access to the accounts and to all books, vouchers, other documents and records.

4) Notwithstanding anything contained in the preceding sub sections

a) The Charity Commissioner may direct a special audit of the accounts of any public trust.

b) State Government may, by general or special order, exempt any public trust or class of trusts from audit.

➤ **AUDITORS DUTY TO PREPARE BALANCE SHEET AND REPORT IRREGULATIES (Rule – 21)**

- 1) It shall be the duty of every auditor auditing the accounts of a public trust under section 33 to prepare a balance Sheet and Income and Expenditure account and to forward a copy of the same along with a copy of his report to the trustee, and to the office of the Charity Commissioner.
- 1A) It shall be the duty of the trustee of a public trust to file a copy of the Balance Sheet and Income & Expenditure account forwarded by the auditor to the office of the Charity Commissioner, if the Charity commissioner requires him to do so.
- 2) The auditor shall in his report specify all cases of irregular, illegal or improper expenditure, or failure or omission to recover moneys or other property belonging to the public trust or of loss or waste of money or other property thereof and state whether such expenditure, failure, omission, loss or waste was caused in consequence of breach of trust, or misapplication or any other misconduct on the part of the trustees, or any other person.

➤ **NOTES**

- 1) Audit is required to be done if gross income exceeds Rs.- 5000/-
- 2) In case where audit is not applicable the trustees have to file accounts in Sch – IX-A and IX-B before 15th October.
- 3) The accounts shall be audited either by a C.A. or by such person authorized by State Govt. Earlier the authorized person was not allowed to conduct the audit for the trust having gross income above Rs.- 1 Lac. Presently this limit of Rs.- 1 Lac is removed.
- 4) The audit report is to be prepared in the prescribed manner mentioned in Rule – 19. the auditor has to report in YES or NO mode except at clause 't' (19-1-f) he has to report any special matter which the auditor may think fit or necessary to bring to the notice of the Dy. C. C. / A. C. C. and as per Sec. 34(2) auditor has to specify all cases of irregularity, illegal or improper expenditure or omission to recover moneys or property and has to report that such loss or waste was caused in consequences of breach of trust, or misapplication or any other misconduct on the part of trustee or any other person.

- 5) The C C office maintains a register for the accounts filed in Sch – X known as register of Audit Report. (Certified copy of this schedule can be obtained for any trust)
- 6) The auditor has to issue a certificate for the corpus donations received.
- 7) The accounts are to be filed with the office of the C C within 15 days from the date of audit. However the last date for filing of the accounts is 15th of October. In case of delay an affidavit cum condonation of delay is to be filed and the Dy CC or ACC may condone the delay with or without cost.

➤ **Maintenance of register**

u/s 36-B

Period:-

Maintain a register for all movable and immovable properties

Prescribed Form:-

Schedule – X AA

➤ **Maintenance of register by a
Medical Centre u/s 41AA & Rule 25A**

Period:-

Governing Body of Medical centre shall maintain a register for recording the category of a patient and their all particulars.

Prescribed Form:-

Schedule – X AAA

Notes

1) Charity Commissioner and State Government have power to issue directions in respect of hospitals etc. to earmark certain beds etc. for poor patients to be treated free of charge or at concessional rates.

2) Charitable Hospitals have to reserve beds for Medical Treatment with concessional rates to patients belonging to indigent and weaker section : Scheme approved by the Bombay High Court w.e.f. 1.9.2006. 10% for indigent patients and another 10% for weaker section depending upon the income.

➤ **INVESTMENTS (SECTION 35)**

(1) Public trust can invest its funds in any of the following modes:

- a. Scheduled Bank as defined by Reserve Bank of India Act, 1934.
- b. Postal Saving Bank
- c. Co-operative bank approved by the State Government.
- d. Public Securities

Provided that such money may be invested in the first mortgage of immovable property situated in India if the property is not leased for a term of years, and the value of the property exceeds by one-half the mortgage money.

Provided further that the Charity Commissioner may by general or special order permit the trustee of any public trust or classes of such trusts to invest the money in any other manner.

2) Nothing in Sub Sec (1) shall effect the investments made by the trust according to the trust deed before the BPT (Amendment) Act 1954 came in to force.

Provided that there after the income and the maturity amount are to be invested according to Sub Sec (1)

NOTE

1) One of the notification provides that investments made pursuant to such order, should not exceed 50% of total investments.

2) Liability for compound Interest on Investment of Money

When trustees have violated the conditions of section 35(1), they are liable for compound interest for the money loss.

➤ **ALLENATION OF IMMOVABLE PROPERTY**
(SECTION 36)

Notwithstanding anything contained in the instrument of the trust :-

- a) No sale, exchange or gift of any immovable property and
- b) No lease for a period exceeding 10 years for agricultural land or exceeding for a period of 3 years in case of non agricultural land or a building.

Belonging to public trust shall be valid without the previous sanction of the Charity Commissioner.

No permission is required for immovable property developed or purchased for the furtherance of the objects of the trust but acquiring immovable property in the nature of investment C. C. permission is required.

➤ NOTES

1) Property of Charitable Trust : Alienation or disposal.

Permission was granted earlier but it was remained incomplete. Then the trustees made agreements with the petitioner with the high rate. ACC rejected the first application due to flip-flop. The High court directed to ACC to decide to whom the property to be sold. The S. C. considered all the aspects and upholds the order of the High Court.

Bhaskar Laxman Jadhav & Ors v. Karamveer Kakasaheb Wagh Education Society & Ors, (2013 AIR (SC) 523 : 203 AIR (SCW) 34 : 2012 (12) Scale 87 : 2013 (2) AIR (Bom) R 117 (SC) 2013 (1) Bom. C. R. 508 (SC).

2) Scope of powers of Charity Commissioner for Grant of sanction :

Alienation of Public Trust Property : Acceptance of Advance Money cannot by pass provisions of prior sanction.

[Suburban Education Society & Anr, v. Charity Commissioner of Maharashtra State & Ors., 2004(2) All MR 575, 2004 (2) Mh. L. J. 792]

3) Development of Trust Property : Development Agreement :
No Post facto sanction :

There is no power to the Charity Commissioner to accord sanction after the transaction and validate it by the so called ex-post-facto sanction.

Central Hindu Military Social Education Society v. Joint Charity Commissioner, Nashik & Anr, 2009 (1) AIR BOM R 422 : 2009 (3) All MR 242 : 2009 (2) Bom. C. R. 499.

4) Excepting of compelling necessities :

The Building of the trust is very old and considering the age of the Buildings a substantial amount is required to be spent for maintaining them. The trust property not fetching any positive income. Finding of the Charity Commissioner about compelling necessity upheld.

Siddhivinayak Construction Pvt. Ltd. & Anr v. Vikas Motiram Desai & Ors., 2012 (4) AIR BOM R 769 : 2012 (4) All MR 70 : 2012 (114) Bom. L. R. 1461 : 2012 (4) Mh. L. J. 913.

5) Jurisdiction of Charity Commissioner,

The High Court held that the Charity Commissioner has exclusive Jurisdiction to accord sanction.

(Charity Commissioner v. Shantidevi Lalchand Chaganlal Foundation Trust. 1989 Mah L. J. 1048 : AIR 1990 Bom 189)

6) Sanction by Civil Court,

where a trust deed does not authorize trustees to alienate. Civil court has no jurisdiction to grant sanction for the sale of the trust Property.

(Charity Commissioner, State of Maharashtra Bombay v. Shantidevi & Ors. 1989 Mah LJ 1048)

7) Trustees empowered to sell the trust property under instrument, yet prior permission mandatory.

(Charity Commissioner, Mah. v. Shantilal Chaganlal Foundation Trust, Lalchand C. Jain, 1989 Mh. I. J. 1048 : 1990 (42) Bom. L. R. 102).

➤ **CONTRIBUTION (SECTION 58, RULES 32 & 33)**

Every public trust (Other than a public trust exempted u/s 58) having gross annual income exceeding 25,000/- has to pay contribution to Public Trust Administration Fund at rates notified by State Government from time-to-time. The present applicable rate notified is @ 2% on entire amount calculated as per Ssch-IX C not above Rs. 25000/-

Gross annual income means gross income from all sources including donations and offerings, but excluding corpus donations. Contribution is payable at the prescribed rate on the gross annual income after making deductions prescribed in Rule 32.

Mumbai High Court has by an interim order stayed the payment of contribution in response to a PIL No.- 40 of 1780 and 1864 of 2007 by order dated 25/09/2009.

The office of the Charity Commissioner is accepting the accounts from the year 2009 without payment of contribution subject to the final order.

➤ **The following trusts are exempt from payment of contribution.**

1. Small trusts having annual income of Rs- 25,000/- or less.
2. Public trusts exclusively for advancement / propagation of Education, Medical relief and Veterinary treatment.
3. Recognized Public Libraries and reading Rooms.
4. Public trusts exclusively for the purpose of relief of distress caused by scarcity, drought, flood, fire, or other natural calamity.

➤ **RESTRICTION ON BORROWING POWERS OF TRUSTEES (SECTION 36A)**

No trustee shall borrow moneys (whether by way of mortgage or otherwise) with or without interest, even from Banks, for purpose of or on behalf of the trust except with the previous sanction of the Charity Commissioner and subject to such conditions and limitations as may be imposed by him in the interest or protection of the trust.

➤ **Explanation on report of auditor or on complaint (Section – 38)**

On receipt of a report of the auditor under section 34 of a report, if any, made by an officer authorized under section 37 or on receipt of a complaint in respect of any trust the DyCC or A C C shall require the trustee or any other person concerned to submit an explanation thereon within such period as he thinks fit.

Report to Charity Commissioner:

on considering the report referred to in section 38, the Dy CC or ACC make a report thereof to the Charity Commissioner about his finding.

➤ **Power of Charity Commissioner to issue directions for proper administration of the trust (Section 41A)**

The Charity Commissioner may from time to time issue directions to any trustee of a public trust or any person connected therewith for proper management of the trust and it shall be the duty of every trustee or of such person to comply with the directions of the C C.

NOTES

1) Direction issued under Section 41-A are binding

In Berar Education General Society election employees of the trust contended election. The Asst. Charity Commissioner issued direction to hold the election but rejected the prayer in respect of holding secret ballot. The High Court directed to hold the elections by secret ballot since there were large number of trustees who were also employed by the trust/society.

[Nathumal K. Goenka v. Asst. Charity Commissioner, Akola, 1994 Mh. L. J. 303]

1) The Direction or instruction issued by Charity Commissioner under section 41-A

2) Cannot be challenged under section 72 before district court.

[Lahudas S. Karad v. State of Mah., 1993 (1) Mh. L. R. 624, 1993 (2) Mh. L. J. 1056]

2) Limitations of the powers of Charity Commissioner

Under Section 41-A he can issue direction for proper administration of trust but cannot appoint committee for administration of trust.

(Assaram B. Shinde v. State of Mah., 2001 (4) Mh. L. J. 548]

➤ **Power of Charity Commissioner to appoint, suspend, remove or discharge trustees and invest property to new trustees :**

1) Any person interested in a public trust may apply to the Charity Commissioner for the appointment of a new trustee, where there is no trustee for such trust or the trust cannot be administered until the vacancy is filled; or for the suspension, removal or discharge of a trustee, when a trustee of such trust:-

a) disclaims or dies.

b) is for a continuous period of six months absent from India without the Leave from the Charity Commissioner

c) leaves India for the purpose of residing abroad;

d) is declared as insolvent;

e) desires to be discharged from the trust;

f) refuses to act as a trustee;

g) becomes in the opinion of the Charity Commissioner unfit or physically incapable to act.

h) in any of the cases mentioned in Chapter III, is not available to administer the trust; or

1) is convicted of an offence punishable under this act or an offence involving moral turpitude.

2) The Charity Commissioner may, after hearing the parties and making such enquiry as he may deem fit, by order appoint any persons as a trustee or may also remove or discharge any trustee for any of the reasons specified in subsection (1).

➤ **Power of Charity Commissioner to frame; amalgamate or modify Schemes**
(Section 50A & Rule – 26)

Where Charity Commissioner has reason to believe that in the interest of the proper management or administration of a public trust a scheme should be settled where two or more persons having interest in public trust can apply for the framing of a scheme. And in the same way in the interest of the public trust and for proper management and administration two or more trust can be amalgamated.

Modification of Scheme

The court has power to modify the scheme but cannot frame entirely new scheme.

Minoo Rustomji Shroff & Ors. V. CC & Ors., 2005 (3) All MR 532 : 2005 (3) Bom. L. R. 534 : 2005 (4) Bom. C. R. 570.

➤ **Consent of Charity Commissioner for institution of suit**
(Section – 51 & Rule – 27)

If the person having an interest in any public trust intend to file a suit of the nature specified in section 50, they shall apply to the Charity Commissioner in writing for his consent.

NOTES

1) For filing suit by public trust, prior permission of CC is mandatory
[Baliram v. Shri Dnyaneshwar Madhurdwait Sampradayik Mndla, 1974 Mh. L. J. Note 31]

2) Suit by Trustees for possession against trespasser
No prior permission of CC under section 51 is necessary.
[Amerchand T. Gupta v. Vasant D. Patil, 1992(1) Mh. L. J. 275]

3) Administration of trust
Seeking direction from court for proper administration, suit without C.C. permission not maintainable.
Navyug CHSL & Anr. V. Vile Parle Kelvani Mandal & Anr., 2005 (3) Bom. C. R. 579.

PENALTIES (SECTION 66)

| Section | Subject | Maximum Fine |
|------------------------|--|---------------------|
| Ss. 18(1), 18(4)(1) | Duty of trustees to apply to Deputy / Assistant CC for registration of public Trust within time | ` 10,000/- |
| S. 18(7) | Duty of trustee to send memoranda of immovable property to certain officers / authorities within time. | ` 10,000/- |
| S. 22 | Failure to report change. | ` 10,000/- |
| S. 22B | Failure to make an application within the time provided for. | ` 10,000/- |
| S. 22C | Failure to send memoranda within the time provided for. | ` 10,000/- |
| S. 29 | Duty of an executor to apply for registration of a public trust within the time provided for. | ` 10,000/- |
| S. 32 | Duty to keep regular accounts. | ` 10,000/- |
| S. 35 | Failure or omission to invest money in public securities. | ` 10,000/- |
| S. 41AA | Failure without reasonable cause to comply with any directions issued under that section. | ` 10,000/- |
| S. 59 | Failure to pay contribution u/s. 58 by a trustee or by a person charging or collecting dharmada. | ` 10,000/- |

THANK YOU

CA VIPIN BATAVIA