

HARDSHIPS FACED IN THE OFFICE OF THE CHARITY COMMISSIONER

HARDSHIP

Synonyms : adversity, asperity, hardness, difficulty, rigor* (Merriam- Webster)

*The difficult and unpleasant conditions or experiences that are associated with something.

Section 22 of the Maharashtra Public Trust Act

22. (1) Where any change occurs in any of the entries recorded in the register kept under section 17, the trustee shall, within 90 days from the date of the occurrence of such change, or where any change is desired in such entries in the interest of the administration of such public trust, report such change or proposed change to the Deputy or Assistant Charity Commissioner in charge of the Public Trusts Registration Office where the register is kept.

Such report shall be made in the prescribed form.

Provided that, the Deputy or Assistant Charity Commissioner may extend the period of ninety days for reporting the change on being satisfied that there was a sufficient cause for not reporting the change within the stipulated period subject to payment of costs by the reporting trustee, which shall be credited to the Public Trust Administration Fund.

(1A).....

(2) For the purpose of verifying the correctness of the entries in the register kept under section 17 or ascertaining whether any change has occurred in any of the particulars recorded in the register, the Deputy or Assistant Charity Commissioner may hold an inquiry in the prescribed manner:

Section 22 of the Maharashtra Public Trust Act

Provided that, in the case of change in the names and addresses of the trustees and the managers or the mode of succession to the office of the trusteeship and manager-ship, the Deputy or Assistant Charity Commissioner may pass order provisionally accepting the change within period of fifteen working days and issue a notice inviting objections to such change within thirty days from the date of publication of such notice:

Provided further that, if no objections are received within the said period of thirty days, the order accepting the change provisionally under the first proviso shall become final and entry thereof shall be taken in the register kept under Section 17 in the prescribed manner:

Provided also that, if objections are received within the said period of thirty days, the Deputy or Assistant Charity Commissioner may hold an enquiry in the prescribed manner and record a finding, as provided by sub-section (3) of this section, within three months from the date of filing objections.

(3)

Section 36 of the Maharashtra Public Trust Act

36. (1) [Notwithstanding anything contained in the instrument of trust—

(a) no sale, exchange or gift of any immovable property, and

(b) no lease for a period exceeding ten years in the case of agricultural land or for a period exceeding three years in the case of non-agricultural land or a building, belonging to a public trust, shall be valid without the previous sanction of the Charity Commissioner.

[Sanction may be accorded subject to such condition as the Charity Commissioner may think fit to impose, regard being had to the interest, benefit or protection of the trust;

(c) if the Charity Commissioner is satisfied that in the interest of any public trust any immovable property thereof should be disposed of, he may, on application, authorise any trustee to dispose of such property subject to such conditions as he may think fit to impose, regard being had to the interest or benefit or protection of the trust.

Section 36 of the Maharashtra Public Trust Act

Provided that, the Charity Commissioner may, before the transaction for which previous sanction is given under clause (a), (b) or (c) is completed, modify the conditions imposed thereunder, as he deems fit:

Provided further that, if such condition is of time-limit for execution of any contract or conveyance, then application for modification of such condition shall be made before the expiry of such stipulated time.

(1A)

(2) The Charity Commissioner may revoke the sanction given under clause (a) or clause (b) of sub-section (1) on the ground that such sanction was obtained by fraud or mis-representation made to him or by concealing from the Charity Commissioner, facts material for the purpose of giving sanction; and direct the trustee to take such steps within a period of one hundred and eighty days from the date of revocation (or such further period not exceeding in the aggregate one year as the Charity Commissioner may from time to time determine) as may be specified in the direction for the recovery of the property.

Section 36 of the Maharashtra Public Trust Act

3[Provided that, no sanction shall be revoked under this section after the execution of the conveyance except on the ground that such sanction was obtained by fraud practiced upon the Charity Commissioner before the grant of such sanction.].

(3)

(4) If, in the opinion of the Charity Commissioner, the trustee has failed to take effective steps within the period specified in sub-section (2), or it is not possible to recover the property with reasonable effort or expense, the Charity Commissioner may assess any advantage received by the trustee and direct him to pay compensation to the trust equivalent to the advantage so assessed.

(5) Notwithstanding anything contained in sub-section (1), in exceptional and extraordinary situations where the absence of previous sanction contemplated under sub-section (1) results in hardship to the trust, a large body of persons or a *bona fide* purchaser for value, the Charity Commissioner may grant *ex-post-facto* sanction to the transfer of the trust property, effected by the trustees prior to the date of commencement of the Maharashtra Public Trusts (Second Amendment) Act, 2017], if he is satisfied that,—

(a) there was an emergent situation which warranted such transfer,

Section 36 of the Maharashtra Public Trust Act

(b) there was compelling necessity for the said transfer,

(c) the transfer was necessary in the interest of trust,

(d) the property was transferred for consideration which was not less than relevant market value of the property so transferred, to be certified by the expert,

(e) there was reasonable effort on the part of trustees to secure the best price,

(f) the trustees actions, during the course of the entire transaction, were *bonafide* and they have not derived any benefit, either pecuniary or otherwise, out of the said transaction, and

(g) the transfer was effected by executing a registered instrument, if a document is required to be registered under the law for the time being force.]

Explanation.— For the purposes of sub-section (5), the term “the Charity Commissioner” shall mean only the Charity Commissioner appointed under section 3.

Section 41A of the Maharashtra Public Trust Act

41A. (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 the trust is properly administered, and the income thereof is properly accounted for or duly appropriated and applied to the objects and for the purposes of the trust; and the Charity Commissioner may also give directions to the trustees or such person that if he finds any property of the trust is in danger of being wasted, damaged, alienated or wrongfully sold, removed or disposed of :

[Provided that, if any application is made by the trustee of any trust for seeking directions under sub-section (1), the Charity Commissioner shall decide such application within three months from the date of its receipt and if it is not practicable so to do, the Charity Commissioner shall record the reasons for the same.]

(2) It shall be the duty of every trustee or of such person to comply with the directions issued under sub-section (1).

Section 41B of the Maharashtra Public Trust Act

41B. (1) On receipt of a complaint in writing from any person having interest in respect of any public trust or *suo motu* the Charity Commissioner or Deputy or Assistant Charity Commissioner may institute an inquiry with regard to charities or a particular charity or class of charities either generally, or for particular purposes.

(2) The officers aforesaid may either hold the inquiry themselves, or entrust such inquiry to the officer authorised under sub-section (1) of section 37.

(3) For the purpose of any such inquiry, the officer holding the inquiry may, by notice, require any person to attend at a specified time and place and give evidence or produce documents in his custody or control which relate to any matter in question at the inquiry.

(4) For the purpose of any such inquiry, evidence may be taken on oath and the person holding the inquiry may for that purpose administer an oath under the Indian Oaths Act, 1873, or may instead of administering an oath, on solemn affirmation require the person to make and subscribe a declaration of the truth of the matters about which he is examined.

Section 41B of the Maharashtra Public Trust Act

(5) The necessary expenses of any person of his attendance to give evidence or produce documents for the purpose of the inquiry shall be paid in the manner prescribed.

(6) After the completion of the inquiry, the person holding the inquiry (not being the Charity Commissioner) shall submit his report to the officer who entrusted such inquiry to him.

(7) The Deputy or Assistant Charity Commissioner of the region concerned shall submit his own report or report received by him under this section to the Charity Commissioner or he may, proceed under section 38, if necessary, or send a copy of the report to the Charity Commissioner with his remarks thereon. The Charity Commissioner may, if he is satisfied that there is a *prima facie* case against the trustees, take such steps as are necessary under the provisions of this Act.

(8) The Charity Commissioner may himself also call for the proceedings of any inquiry made under this section for such action as he may think fit.

Section 41D of the Maharashtra Public Trust Act

41D. (1) The Charity Commissioner may, either on application of a trustee or any person interested in the trust, or on receipt of a report under section 41B or suo motu may suspend, remove or dismiss any trustee of a public trust, if he,—

- (a) makes persistent default in the submission of accounts report or return;
- (b) wilfully disobeys any lawful orders issued by the Charity Commissioner under the provisions of this Act or rules made thereunder by the State Government;
- (c) continuously neglects his duty or commits any mal-feasance or misfeasance, or breach of trust in respect of the trust;
- (d) misappropriates or deals improperly with the properties of the trust of which he is a trustee ; or
- (e) accepts any position in relation to the trust which is inconsistent with his position as a trustee ;
- (f) if convicted of an offence involving moral turpitude.

(2) (a) When the Charity Commissioner proposes to take action under sub-section (1), the Charity Commissioner may issue notice to the trustee or the person against whom the action is proposed to be taken only when he finds that there is *prima facie* material to proceed against the said person.

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(b) The trustee or person to whom a notice under clause (a) is issued, shall submit his reply thereto within fifteen days from the date of receipt of notice.

(c) If the person fails to give reply to the notice issued under clause (a) or the Charity Commissioner finds that the reply is not satisfactory, the Charity Commissioner shall frame charges against the said person within fifteen days of the filing of the reply or the default in the filing of reply, as the case may be, and give the said person an opportunity of meeting such charges and after considering the evidence adduced against him and in his favour, may pass order regarding suspension or removal or dismissal within three months from the date of framing of charges. If it is not practicable for the Charity Commissioner to issue notice, frame charges and pass final orders within stipulated time, he shall record reasons for the same.

(d) The order of suspension, removal or dismissal shall state the charges framed against the trustee, his explanation, if any, and the finding on each charge with reasons therefor.

Section 41D of the Maharashtra Public Trust Act

(3) Pending disposal of the charges framed against a trustee the Charity Commissioner may place the trustee under suspension.

(4) Where the Charity Commissioner has made an order suspending, removing or dismissing any trustee and such trustee is the sole trustee or where there are more than one trustee and the remaining trustee according to the instrument of trust, cannot function or administer the trust without the vacancy being filled, then in that case the Charity Commissioner shall appoint a fit person to discharge the duties and perform the function of the trust, and such person shall hold office only until a trustee is duly appointed according to the provisions of the instrument of trust.

(6)

(7)

Section 41E of the Maharashtra Public Trust Act

41E. (1) Where it is brought to the notice of the Charity Commissioner either by the Deputy or Assistant Charity Commissioner through his report or by an application by at least two persons having interest supported by affidavit,—

(a) that any trust property is in danger of being wasted, damaged or improperly alienated by any trustee or any other person, or

(b) that the trustee or such person threatens, or intends to remove or dispose of that property, the Charity Commissioner may by order grant a temporary injunction or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of such property, on such terms as to the duration of injunction, keeping an account, giving security, production of the property or otherwise as he thinks fit.

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(2) The Charity Commissioner shall in all such cases, except where it appears that the object of granting injunction would be defeated by delay, before granting an injunction, give notice of the facts brought to his notice to the trustee, or the person concerned.

(3) After hearing the trustee or person concerned and holding such inquiry as he thinks fit, the Charity Commissioner may confirm, discharge or vary or set aside the order of injunction or pass any other appropriate order.

(5)

Section 41F of the Maharashtra Public Trust Act

41F. (1) Wherein it is brought to the notice of the Charity Commissioner by any Assistant Charity Commissioner or Deputy Charity Commissioner or two or more persons having interest in the trust property that disobedience of any of the orders passed under any of the sections in the Chapter VI is committed, the Charity Commissioner may after hearing the parties concerned, order the property of such person guilty of such disobedience or breach, to be attached and may also order such person to be detained in jail for a term not exceeding six months. No attachment under this sub-section shall remain in force for more than one year, at the end of which time, if the disobedience or breach continues, the property attached may be sold, and out of the proceeds the Charity Commissioner may award such compensation as he thinks fit, and shall pay the balance, if any, to the person entitled thereto, and thereupon, any order passed by the Charity Commissioner, under this section, if in force shall stand vacated, or as the case may be, cancelled.

(2)