

CIRCULAR No. 217

SUBJECT- Information for the purpose of under section 41 D of the Act.

It is observed by the Charity Commissioner, that while preparing action to set right the affairs of the trust, among other things, the Regional Officers, in majority of cases, invariably propose action under Section 41(D) of the Bombay Public Trusts Act, 1950, viz, suspension, removal and dismissal of trustees. It is also observed that this action is proposed by them as if it is one of the routine actions.

If the Regional Officers on enquiry find defaults committed by the trustees, it should be seen whether the acts or omissions found by the Inspector or the Regional Officer were deliberately or wilfully actuated by dishonest or corrupt motives. It should be generally seen whether there is member in such commission or omissions. If the acts and omission are such which could be rectified by other actions an attempt should be first made to resort to the same. Only when the trustees persist in acts against the interest of the trust despite directions under section 41A to put the trust in or action under section 41(D) may be recommended.

It should be borne in mind that action under section 41(D) is a serious matter. To initiate it suo motu, all admissible evidence should be collected and made available to the Charity Commissioner. In most of the cases while proposing this action neither the Inspectors nor the Regional Officers collect all the full particulars of the trust. allegations, documents, and oral evidence to substantiate it. The proposal must include allegations or charges to be framed the evidence, both oral and documentary which would be proceed at the trial, and names of witnesses who to facts and those proving the documents. The proposal should not be in the nature of judgement but should rather be in the nature of instructions given to the Counsel. In the absence such facts and particulars and nature of evidence collected, it is not possible for the Charity Commissioner to take the action suo motu as in such cases the onus of proof lies upon the Charity Commissioner.

It is therefore, directed that when the Regional Officers propose action under section 41(D) they should invariably furnish the following information.---

- (1) Full particulars of Trust viz, name of Trust, its registration No., mode of succession, properties with their value etc.
- (2) Name of trustees.

(3) Nature of the allegations, and charges which according to the Regional Officers can be prima facie proved at the trial.

(4) The evidence collected by the Inspector and which would be used to prove the particular charges.

(5) Whether Accounting Returns are received whether they are or qualified.

(6) Under which clause as referred to in section 41(D) particular clean case falls.

(7) Other such pertinent information which will be proved by us proving the charges at the trial.

It is further directed that if the Regional Officer want interim suspension of trustees and appointment of fit person, they should make out a case and suggest names of persons along with full details as in the case of appointment of new trustees.

These directions should be followed scrupulously receipt of the Circular be acknowledged.

Dated : 2nd August 1978

V.G. NIRGUDE,
Charity Commissioner,
Bombay
