

C I R C U L A R NO.288/95 dated 2/3/1995.

Sub:- Previous sanction of Charity Commissioner
For prosecution under Section 83 of the
Bombay Public Trusts Act, 1950.

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It has been observed that the sanction orders under Section 83 for prosecution, are being granted mechanically, and the proposals put up before Joint Charity Commissioner/s by the Regional Officers, are not properly scrutinized. No proper precautions were taken to comply with all the necessary ingredients, required under Section 83 read with the relevant sections under which the offence was committed.

2/- Therefore all the Regional Officers and the Joint Charity Commissioner/s are directed to take due and proper care and caution in submitting the proposals seeking sanction for prosecution under Section 83 of the Bombay Public Trusts Act, 1950.

3/- All the officers shall take the prosecutions on the following points :-

- (1) Documents and the material placed before Joint Charity Commissioner, on which the sanction to prosecute are granted, should be maintained and preserved for the purposes of producing those before the Courts, if and when required.
- (2) The sanction should not be issued mechanically and casually. Before issuing sanction replies, if any, received from the trustees be scrutinized very carefully.

- (3) The proposed accuse must be the trustee/ manager of the said trust at the relevant period.
- (4) Limitation for institution of the prosecution, to be observed.
- (5) If any, delay in institution of prosecution is caused, it must be explained satisfactorily , and with satisfactory evidence.
- (6) The certified copies of the relevant documents are not sufficient to impose the liability on the accused trustees. Oral evidence has to be adduced in addition the documentary evidence.
- (7) The concerned parsons (Auditor,C.A.etc.) must be examined as witness.

So also all other necessary ingredients required under the relevant provision and under which the said offence was committed must be observed.

4/- The copy of the judgment and order passed by Chief Judicial Magistrate, Pune is sent herewith for information. All the officers are instructed to go through the said judgment and to see that every care and precaution is taken minutely, regarding the proposal and sanction under Section 83 of Bombay Public Trusts Act.

Charity Commissioner,
Maharashtra State, Bombay.

Copy to : Establishment;

The Joint Charity Commissioner,
Head office/Pune/Aurangabad/Nagpur.

The Deputy Charity Commissioner,
Gr.BombayRegion/Pune/Kolhpaur/Nagpur.

The Asstt. Charity Commissioner,
Gr.Bombay/Nashik/Thane/Chandrapur/Ahmednagar/
Gadchiroli/Dhule/Solapur/Jalgaon/Ratnagiri/Sindhudurg/
Wardha/Bhandara/Alibag/Sangli/Satara/Bheed/Jalna/
Parbhani/Nanded/Latur/Osmanabad/Akola/Buldhana/
Amravati/Yeotmal.

(2) As per final order.

REASONS.

4. Point No.1 :- Oral testimony of P.W.1 Pandurang Bapu Shelke adduced on behalf of the prosecution to prove its case. According to him, the registered number of the Trust Rajaneesh Foundation is E-625 and its registered office is at Koregaon Park, Pune. He got the audited statement of the accounts of this trust for the period 31-12-81 to 31-12-86. As per the statement made by the trustees, on 3-12-81 cash in hand was Rs.1,35,890/- and on 31-12-82 cash in hand was Rs.3,27,059/-, on 31-12-83 it was Rs.1,00,878/-, on 31-12-84 cash in hand was Rs.90160/-, on 31-12-85 it was Rs.3,75,869/- and on 31-12-86 it was Rs.23,370/-. Statement to that effect submitted by the trustees and it is at Ex.41. Thereafter, show cause notice was issued to the trustees. Office copy of this notice is on record as per Ex. 42 and it is signed by the Superintendent. All the trustees have replied to the said notice. The reply of the trustees is at Ex. 43. Thereafter the Deputy Charity Commissioner Shri S.S. Chaudhary and Shri Pendase have recorded the statement of the trustees and the statement of the trustees are at Ex. 44. After going through their statements, the Deputy Charity Commissioner then

sent the proposal to launch the prosecution against the trustees, to the Joint Charity Commissioner. It is admitted by the trustees in the statement that they have retained the Cash in hand and administration of the trust is managed by some other trustees. It is also informed to the Deputy Charity Commissioner that on account of the arrears of the Income Tax they could not deposit the money in the Bank. As per the provisions of Sec. 35 of the Trust Act, trustees ought to have invested this amount in the scheduled bank. However, they retained the cash in hand and breached the provisions and on the basis of this material placed before him, the Joint Charity Commissioner was pleased to accord the sanction to institute the prosecution against the accused persons. The sanction order is at Ex.45. In his cross-examination P.W.1 Pandurang Shelke has admitted that personally he do not know about the papers sent to the Joint Charity Commissioner. He do not possess any record to show that what papers were sent to the Joint Charity Commissioner by the Deputy Charity Commissioner. Thus it is not known that on what material placed before the Joint Charity Commissioner the sanction to prosecute was accorded. However, it is doubtful that the sanction was accorded in the year 1989. It is further not

disputed that some of the trustees meanwhile retired or their names were deleted and the new one substituted at their place. This change was made somewhere in the year 1985-86. It is further admitted by P.W.1 Pandurang Shelke that the sanction order was issued mechanically and he submitted in unequivocal terms that none of the accused was trustee of the trust in the year 1981 or in the years 1982-83. He further admitted that accused Nos. 3 and 5 became the trustee of the trust for the first time in the year 1984 and accused Nos.1,2,4 in the year 1985. Even if it is assumed for the sake of argument that the abovesaid trustees accused were the trustees for the said period, the burden to establish this fact lies upon the prosecution. It is for the prosecution to prove that the necessary steps have been taken to launch the prosecution against the accused well in time and the delay, if any, while launching the properly explained. The offence under Sec.66 of the Bombay Public Trust Act is punishable with fine only and the limitation for institution of the prosecution in such type of cases is of 6 months as per Sec.468 of Cr.P.C. If the prosecution wanted to take the benefit of the exclusion of time for the cononation of delay, if any, as per the provisions of Sec.469 of Cr.P.C. it

is for the prosecution to explain the delay satisfactorily and by way of satisfactory evidence. That burden has not been discharged by the prosecution. The audit note - certified copy is not sufficient to fasten the liability with the accused. Necessary particulars are not given in the audit note. The person who actually audited the trust has not been examined as a witness. For these reasons I find that on the basis of the available evidence charges leveled against the accused could not be proved. Hence, I answer the point No.1 in the negative and deem it proper to pass the following order.

O R D E R

- (1) Accused are acquitted for committing the offence punishable U/s. 35 r.w. Sec. 66 of Bombay Public Trust Act.
- (2) Their bail bounds stands cancelled.

(V.P. Rothe)
Chief Judicial Magistrate,
Pune.

Dt/-30/11/91.