

CIRCULAR No.44

SUBJECT :- Procedure to be followed in cases in which a Court issues notice as a party or otherwise to the Deputy or Assistant Charity Commissioner.

It has been brought to the notice of the Charity Commissioner that in certain suits filed in Civil Court the Deputy or Assistant Charity Commissioner of the Region concerned is made a party and notice is issued to him by the Court. Likewise, in certain proceedings under Section 47 and 55 of the Bombay Public Trusts Act,1950, the courts have issued notice to the Deputy or Assistant Charity Commissioner concerned, though he is not a party to the proceeding. The following instructions should be followed in such cases :

i)Regarding suits – Suits filed in civil Courts may either the suits filed under Section 50 of the Bombay Public Trusts Act,1950, or suits other than those filed under section 50. If a suit is filed under section 50 and Deputy or Assistant Charity Commissioner is made a party, the Deputy or Assistant Charity Commissioner concerned may, in response to the notice issued by the Court, invite the attention of the Court to section 51(3) and state that he has been wrongly impleaded as a party and that the Court may, if it so desires, call upon the Plaintiff to amend the suit and make the Charity Commissioner a party to the suit. In suits other than those filed under section 50, the Deputy or Assistant Charity Commissioner may examine the facts of each case. Ordinarily in such cases, it may be pleaded that Deputy or Assistant Charity Commissioner is not a necessary party.

ii)Regarding proceeding under Section 47 - Though the Act does not provide for issue of notice to the Charity Commissioner or the Deputy or Assistant Charity Commissioner of the Region concerned. It is always open to the Court to issue notice to the Charity Commissioner or the Deputy or Assistant Charity Commissioner in the interests of the public trust concerned. If a notice is issued in such cases, the Deputy or Assistant Charity Commissioner should invariably respond to such notices. In such cases, particulars of the proposed trustees should be invariably obtained from the applicants, before giving consent. These particulars should include his age, education, occupation, approximate income, whether trustee of any other trust, if so which, any special qualifications for being trustee and other particulars, as may be necessary in any particular case. In important cases, local inquiries through the Inspector should be invariably made with a view to ascertaining the fitness or otherwise of the proposed trustees and also ascertaining whether better persons are available for appointment as trustees. Local inquiries through the Inspector may also be made in other cases, if considered necessary. As the efficient administration of public trusts, which is the object of the Bombay Public Trusts Act,1950, almost wholly depends on

the selection of right persons as trustees, every assistance should be given to Courts in this matter.

(iii) Regarding proceedings under Section 55- If a notice of proceedings under Section 56 is issued to the Deputy or Assistant Charity Commissioner of the Region concerned, he may request the Court that in view of the fact that under Section 55 of the Bombay Public Trusts Act, it is the Charity Commissioner who is empowered to issue notice to the trustees to apply for directions to the Court for cypres application of the trust funds, the Court may issue a notice to the Charity Commissioner instead of the Deputy or Assistant Charity Commissioner.

If the assistance of a pleader is considered absolutely essential in any case, the Deputy or Assistant Charity Commissioner may appeal through the Government Pleader and press for his costs under Sections 79A and 79B of the Bombay Public Trusts Act, 1950.

D.R.PRADHAN,  
Charity Commissioner, Bombay

Dated : 5<sup>th</sup> January, 1953.