

CIRCULAR No.52

SUBJECT : Donations received by a public trust and offering made to a deity – Whether liable for contribution.

The Assistant Charity Commissioner, Baroda, has raised a question whether donations received by a public trust or offerings made to a deity are liable to contribution under the Bombay Public Trusts Act, 1950. He has forwarded a copy of the judgment of the Bombay High Court delivered on 21st April, 1950 in the case of Kantilal Mansukhbhai, Manager of the Dakore Temple Committee Vs. The Province of Bombay and others (Appeal No.183 of 1948) wherein it was held that looking to the scheme of the Bombay Public Trusts Registration Act, 1935 and particularly to sections 5,6,11 & 14, the offerings of the devotees are not income which the Legislature intended to be considered as part of the gross income for the purpose of payment of contribution under section 14. The High Court held that the gross income referred to in Section 14 of the Act is income from the trust property, both movable and immovable, and not income received by the trust from other sources like donations and offerings. Stating that sections, 18,19,21 and 58 of the Bombay Public Trusts Act, 1950, are analogous to sections 5,6,11 and 14 of the Bombay Public Trusts Registration Act, 1935, the Assistant Charity Commissioner inquires whether the Explanation to Section 58 of the Bombay Public Trusts Act, 1950, in any way affects the decision of the High Court.

2. The question raised by the Assistant Charity Commissioner has an interesting history behind it. This question was contested in 1942 in the Small Cause Court, Bombay in a case under the Parsi Public Trusts Registration Act, 1936. It was held in that case by Shri Lalkaka, Judge of the Small Cause Court, Bombay, after considering the various provisions of the Act, which are analogous to the provisions of the Bombay Public Trusts Registration Act, 1935, that voluntary donations or gifts received by the trustees of a public trust can not be regarded as included in the words "gross income of the public trust" used in the proviso to Section 15 of the Bombay Public Trusts Registration Act, 1936.

The decision was based on the following reasons which appears in the Judgment :

Section 3(3) of the Parsi Public Trusts Registration Act defines "public trust" as meaning " in express or constructive trust created or existing for public purposes of a religious or charitable nature"

While, "trust" is defined by section 3 of the Indian Trusts Act, 1982 as an obligation annexed to the ownership of property, and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him for the benefit of another, or of another and the owner". Section 3(6) of the Parsi Public Trusts Registration Act makes his definition of "trust" applicable to the latter Act.

Even if it is assumed that the word "income" is used in the Act in its widest significance, as meaning "what comes in" and thus as convertible with the word "receipts" whatever their nature by applying the definition of the word "trust" as given by the Act to the material words under consideration, viz. "the gross income of the public trust" as used in the proviso to Section 15, the expression in question can only be construed to mean "the gross income from or receipts arising out of the obligation annexed to the ownership of property in respect of which the confidence is reposed in the trustees" which in other words must mean "the gross income of the trust property" as that is the only part of the receipt which arises from the ownership of the property".

After this decision, Government by their Notification, Revenue Department No.6336/33 dated 15th November,1946 added an explanation to rule 18 of the Parsi Public Trusts Registration Rules (similar explanation was also added to analogous rule 18 of the Bombay Public Trusts Registration Act, 1935), in the following terms –

"Explanation : For the purposes of this rule the term ' gross annual income' shall not include donations given or offerings made with a specific direction that they should form part of the corpus of the public trust property".

The question was once again raised in the Small Cause court, Bombay, whether the above Explanation added to rule 18 can in any way affect the meaning and scope of the words " gross income" used in the proviso to Section 15 of the Parsi Public Trusts Registration Act,1936. The same Judge held that, as previously held by him, on consideration of the provisions of the Act the words " gross income of the public trust" can not be construed to include any voluntary donations and gifts received by the trustees whether they are given with a specific direction that they should form part of corpus of the public trust property or otherwise. He further held that any attempt by a rule to give a wider or narrower interpretation to the expression "gross income of the public trust" as used in section 15 of the Act must be held to be beyond the rule making authority under the Act. The said amending notification was accordingly held to be 'ultra vires' and it was held that no change in the position in law as it stood before the amendment was made by the addition of the Explanation to Rule 18, had occurred.

These decisions and similar decisions of other Courts were carefully considered and an explanation was added to section 58 of the Bombay Public Trusts Act,1950 by the Bombay Public Trusts (Amendment) Act,1915.

3. In view of the fact that a provision of the Act itself has not been made defining the words 'gross annual income" for the purposes of contribution to the Public Trusts administration Fund, no controversy on this question can now be raised. The Explanation is clear and provides

that gross annual income for the purposes of contribution shall include income from all sources. This will include income from donations and offerings. There is, however, one exception incorporated in the explanation itself. If donations are given or offerings made with a specific direction that they shall form corpus of the public trust, the same shall not be included in the gross annual income for the purposes of contribution Rule 32(3) (iii) reiterates the exception and Rule 32(3)(iv) provides a further exception, viz. that in calculating the gross annual income for the purposes of assessing contribution, deduction shall be allowed in respect of donations received from other public trusts including Dharmadas to which the Bombay Public Trusts Act, 1950 applies.

It would, thus, appear that after the addition of the Explanation to section 58 of the Bombay Public Trusts Act, 1950, the question raised by the Assistant Charity Commissioner, Baroda, can only be answered, as stated above, in terms of the Explanation and all decisions under the old Acts on this point can no longer serve as a guide for interpreting the words "gross annual income of a public trust" for the purposes of contribution.

Dated : 20th April, 1953

D.R.PRADHAN
Charity Commissioner, Bombay