

Circular No.65

SUBJECT : Can the question whether a trust exists and such trust is a public trust be decided as a preliminary issue in an inquiry under Sec.19 of the Bombay Public Trusts Act,1950.

The Assistant Charity Commissioner, Poona, enquires whether, in a suo motu inquiry, in which the trustee has refused to apply under section 18, the statutory issue whether a trust exists and whether such trust is a public trust, should be tried as a preliminary issue, since it is not possible in such an inquiry to have material to determine the other issues and the trustee called upon to apply under section 18, if the issue is answered in the affirmative. He further enquires whether it would be competent for the trustee to appeal against the finding on the preliminary issue and whether prosecution can be launched against him if he neither appeals nor complies with the order to apply under section 18.

In a suo motu inquiry under section 19, it is neither necessary nor desirable to record a finding in the first instance on the preliminary issue whether a trust exists and whether such trust is a public trust, with a view, as suggested by the Assistant Charity Commissioner, to calling upon the trustee thereafter to make a regular application under Section 18. The proper procedure in such a case is to collect through the Inspector particulars required to try all the issues. The Deputy Charity Commissioner or Assistant Charity Commissioner can also, under powers vested in him under section 73 of the Bombay Public Trusts Act,1950, summon and enforce the attendance of any person, including the trustee, and examine him on oath. If the trustee refuse to respond to the summons and/or refuses to furnish particulars when the Deputy/Assistant Charity Commissioner examines him on oath, he will be exposing himself to the penalty provided under the law for such refusal. In case the Deputy/Assistant Charity Commissioner holds that a trust exists and such trust is a public trust, the trustee concerned will also be liable to prosecution under section 66 read with section 18 of the Bombay Public Trusts Act,1950.

Dated : February,1954

D.R.PRADHAN  
Charity Commissioner, Bombay