

Bombay High court decides on contribution to be levied by the State Government on Public Trust

Devendra Prakash Shah and Others (petitioner) v/s The State of Maharashtra and Anr.

Background:

Public Interest Litigation (PIL) and multiple writ petitions were filed challenging the mandatory contributions levied by the State Government of Maharashtra on public trusts under Sections 57 and 58 of the Maharashtra Public Trusts Act, 1950 (**MPT Act**). These contributions were made to the Public Trusts Administration Fund (**PTA**), managed by the Charity Commissioner.

Section 57 of the MPT Act provides for formation of PTA which shall vest with the Charity Commissioner. Section 58 of the MPT Act requires every Public Trust to make contribution to the PTA, not exceeding 5% of their gross annual income or of their gross annual collection. The parameters to be considered for determining rate of contributions are also set out in Section 58 of MPT Act.

The State Government is empowered to prescribe the exact rates of contributions for various kinds of trusts by publishing orders in the official gazettes.

Facts:

- The State Government had fixed contribution rate at 2% of the gross annual income of a public trust for the financial years 2003-2004 and 2005-2006 vide order dated 20th April 2005.
- This order was challenged before the Bombay High Court on the grounds that:
 - The contributions recovered from the Trusts are excessive and no further contributions were necessary.
 - The contribution of 2% was not based on the parameters set out in Section 58(4) of the MPT Act.
- The Bombay High Court passed an Interim order dated 25th September 2009
 - Restraining the State Government from collecting any amount from the Trust towards PTA.
 - Allowing the Charity Commissioner to utilize the existing funds lying in PTA.
 - Permitted the Charity Commissioner to file an application with High Court if additional funds were needed.
- The argument raised before the High Court was that the interim arrangement of stay on contributions needed to be made absolute as there was no need for collection of any contribution to the Fund.
- An affidavit dated 6th August 2022 was filed by the Charity Commissioner which states that:
 - The expenditure incurred by the State Government for operationalisation of the Charity Commissioner's office during 2009-10 and 2021-22 was Rs.492.27 crores.
 - The total amount immediately required for reimbursement to the State Government and for other purposes is Rs.570.67 crore whereas current balance in the PTA as on 21st June 2022 was only Rs.43.18 crores.

High Court's Analysis and Decision:

- On the basis of the above facts, the High Court observed that the interim stay on contributions was granted due to surplus funds available with the Charity Commissioner and now the balance in PTA is substantially eroded and the salaries and expenditure of the Charity Commissioner are borne by the State Government.
- It was also observed that there was no challenge to the provisions of Sections 57 and 58 of the MPT Act and it was held that in absence of any challenge to these provisions, State Government cannot be restrained from exercising statutory powers of fixation of rates of contribution.
- The High Court also held that the interim order was issued in response to the circumstances prevailing at that time, specifically when there was availability of surplus funds with the Charity Commissioner.
- The High court held that the State Government and Charity Commissioner are restrained from levying or collecting contributions based on the orders challenged in the petitions or based on any previous orders.
- State Government shall be at a liberty to assess the current factual situation based on the parameters set out under Section 58 of the MPT Act and to pass appropriate orders pertaining to the levy of contributions from the Trust to the Funds.

CNK Comments:

With the Court now vacating the stay, public trusts may once again become liable to contribute to the PTA on the issue of fresh order. Since the High Court has directed that the Charity Commissioner can start levying charges only after assessing the situation, one may hope that the charge will be prospective and would not apply retrospectively.

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MUMBAI

3rd Floor, Mistry Bhavan, Dinshaw Vachha Road,
Churchgate, Mumbai, 400 020, India.
Tel: +91 22 6623 0600

501/502, Narain Chambers, M.G. Road, Vile Parle
(East), Mumbai 400 057, India.
Tel: +91 22 6250 7600

Chennai: +91 44 4384 9695

Vadodara: +91 265 234 3483

Ahmedabad: +91 79 2630 6530

GIFT City: +91 79 2630 6530

Bengaluru: +91 91411 07765

Delhi: +91 11 2735 7350

2 **Pune:** +91 20 2998 0865

Kolkata: +91 98 3680 5313

Gurgaon: +91 97 1722 2088

Dubai: +971 4355 9533

Abu Dhabi: +971 4355 9544