

Contribution by Charitable Trusts - Current Legal Status in Maharashtra



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There is a confusion prevailing amongst the trusts and professionals regarding the Contribution payable to Hon. Charity Commissioner's offices especially when the online verification forms generated after uploading annual audited account statements, shows Contribution payable by all the trusts, irrespective of the exemptions available and the stay by Hon. Bombay High Court for collection of the same.

The author has penned down threadbare analysis of the provisions and the law relating to the Contribution under the Maharashtra Public Trust Act, 1950 and the important judgments on the issue. Not only this but the author also advises how to clear the clouds while signing the verification form.

1. Brief Background

To recapture in brief, to administer in a structured and systematic way to and prevent the misuse of the trusts and trust properties left by the original donors for the purpose and objects for which the Trusts were formed and the property donated, the Bombay Public Trusts Act 1950 (now Maharashtra Public Trusts Act, 1950) was enacted (the Act).

To meet the expenditure of this administration a fee can be collected from the trusts from its gross income by the offices of Charity Commissioner. The present rate prescribed is @2% of gross income.

2. Prelude

To explain the background of the Contribution and the presently operative stay granted against collection of Contribution by Hon. Bombay High Court, I had written an article which was published on itatonline.org in April 2019. Following is the link to the said article: -

[https://itatonline.org/articles_new/contribution-by-charitable-trusts-current-legal-status-in-maharashtra/#:~:text=Contributions%2D%20Current%20Status%20in%20the%20State%20of%20Maharashtra&text=Bombay%20High%20Court%20\(PIL%2040,the%20cases%20are%20tagged%20together](https://itatonline.org/articles_new/contribution-by-charitable-trusts-current-legal-status-in-maharashtra/#:~:text=Contributions%2D%20Current%20Status%20in%20the%20State%20of%20Maharashtra&text=Bombay%20High%20Court%20(PIL%2040,the%20cases%20are%20tagged%20together)

3. Present status

The submissions of Annual Report including Audited Accounts and Reports in Form IXC and IXD etc. are now compulsory to be uploaded online. The online submitted forms generate an Acknowledgment which shows the Contribution

payable, apart from the fact that the same is stayed by the Hon. Bombay High Court vide its order dt. 25-9-2009 in PIL 40/2007.

At present, an amount is shown as Contribution payable by the online verification form generated on submissions on the portal of Charity Commissioner, wherein the amounts of income and expenditure are auto-picked up from the Income and Expenditure account.

A doubt is raised as to whether the said amount reflected in the online generated verification form as payable may be demanded/collected by the office of the Charity Commissioner at some later stage. A loud and clear answer is NO, it cannot be collected at a later stage, if it was not due for payment as per the law. The reasons are explained in brief as follows.

4. Analysis of the nature of Contribution

The Act was enacted with a view that public trusts are administered for the purpose intended by the authors of the trust and for preserving the trust properties from waste and misappropriation by the trustees.

Contribution is collected to meet the expenditure in constructing buildings for locating the head office and regional offices and the increase in allowances or other amenities to the staff have also to be included in the costs of the services.

A question came to decide the validity of the Act and the nature of the contribution, before Hon. Bombay High Court in the case of **Ratilal Panachand Gandhi versus State of Bombay, AIR 1953 Bom 242, dt.12-09-1952 (division bench 2 judges)**.

In this case, validity of the Act itself was challenged under Article 25 and 26 of the Constitution, which was dismissed and the Act was held as not ultra-virus.

One of the challenge was that the State legislature is not competent to collect the Contribution.

Hon. High court observed that -

Sec. 57 provides to set up a fund for the establishment of a fund to be called the Public Trusts Administration Fund, and that fund is to be vested in the Charity Commissioner, and Sub-section (2) provides for the sums that are to be credited to that fund. Sec. 58 provides that every public trust shall pay to the Public Trusts Administration Fund annually such contribution on such date and in such manner as may be prescribed, and now under the rules framed prescribe that the contribution fixed is 2 per cent, upon the gross annual income of every public trust. Certain trusts are exempted in favour of education and medical relief. Section 60 provides that the Public Trust Administration Fund shall, subject to the provisions of this Act and subject to the general or special order of the State Government, be applicable to the payment of charges for expenses incidental to the regulation of public trusts and generally for carrying into effect the provisions of this Act.

In this connection two other sections may be looked at. One is Section 6A which provides that the officers under the Act shall be servants of the State Government and they shall draw their pay and allowances from the Consolidated Fund of the State; and Section 6B which provides that there shall be paid every year out of the Public Trusts Administration Fund to the State

Government such cost as the State Government may determine on account of the day (read D.A.), pension, leave and other allowances of the officers appointed under the Act. (Para 8)

.....The competency of the Legislature to enact these provisions depends upon the contribution being a fee. If it is a tax, then undoubtedly the Legislature would not be competent to enact these provisions. (Para 9)

In the judgment, the provisions of the Constitution and in particular the entries in the Lists I, II and III were analysed to come to the conclusion that the State is not permitted to collect the tax under the legislated MPT Act and that the contribution is a fee.

The matter was challenged before Hon. Supreme Court which confirmed the view of Hon. High court and held that —

"A tax is undoubtedly in the nature of compulsory exaction of money by a public authority for public purposes. the payment of which is enforced by a law. But the other and equally important characteristics of a tax is, that the imposition is made for public purpose to meet the general expenses of the State with reference to any special advantage to be conferred upon the payers of the tax. . . .

Fees. are payments primarily in the public interest, but for some special service rendered or some special work done for the benefit of those from whom the payments are demanded. Thus in fees there is always an element of "quid pro quo" which is absent in a tax... Thus, two elements are essential in order that a payment may be regarded as a fee. In the first place. it must be levied in consideration of certain services which the individuals accepted either willingly or unwillingly and in the second place the amount collected must be earmarked to meet the expenses of rendering those services and must not go to the general revenue of the State to be spent for general public purposes".

Ratilal Panachand Gandhi v. State of Bombay, AIR 1954 SC 388, dt.18-03-1954 (Constitution bench 5 judges).

It is not out of place to mention here the important and established principle of law stated in Article 265 of the Constitution, "*no tax shall be levied or collected except by the authority of law.*" Not only levy but even collection is not permitted except as permitted by the law.

The moment the fees collected are in excess of the expenditure incurred or to be incurred, the same partakes the nature of tax and the State is not permitted to collect the same being not permitted by the law. Thus, the collection of fee by way of contribution from the trusts more than the expenditure required to render the services is not permitted.

5. Salvation Army's case and the Amendments in the Act due to Hon. SC's judgment

As is already discussed in my earlier article on the subject (link given in para 2 above) the collection of contribution was challenged successfully before Hon.

Supreme Court in the case of **State of Maharashtra & Ors. vs The Salvation Army, Western India Territory, SC, 1975 AIR 846, dt. 10-02-1975.**

In this case, the then existing Rule 32 was held *ultra-virus* and Hon. Apex Court held that -

"We declare that levy of contribution at the rate of 2 per cent of the annual gross income of the trusts became levy of tax after 31st March, 1970 and was without the authority of law. Since there was a prayer in the writ petition to declare Rule 32 as ultra vires, we think that the respondent is entitled to this relief. We allow the appeal to the extent indicated but make no order as to costs."

"As a matter of principle, expenses for service should be correlated to the contribution levied under Section 58 of the Act. And the capital expenses should be from the surplus". Therefore, before levying any fee or determining its rate, the Charity Organisation has to balance its budget."

Accumulations in the Fund till 1970 were spent out during the pendency of the appeal to the Supreme Court in the abovementioned case. To enable the Charity Organisation to meet its expenses out of the collections, by Government Notifications dated the 13th December, 1973 and the 13th December, 1974, Rule 32 was amended to levy the contribution at the rate of 5 per cent for the period from the 15th December, 1973 to the 14th December, 1975.

No contribution was levied for the periods from the 1st April, 1970 to the 14th December, 1973 and from the 15th December 1975 to the 31st March 1977 because the balance in hand during these periods was considered sufficient to meet the expenses.

But it was found necessary to make adequate provisions to enable the Charity Organisation to raise funds to meet its expenses for the period commencing on the 1st April, 1977. As per guidelines laid down by the Supreme Court, a flexible provision had to be made so that an appropriate rate may be fixed from time to time, which will be commensurate with the services to be rendered by the Organisation. (M.G.G. Pt. V, dt. 30.6.1977 page 137)

Accordingly, Sub-section (4) is inserted in Sec. 58, which is important in this regard and which reads as follows:-

In determining the rate or rates of contribution to be notified under sub—section (1), the State Government shall take into consideration the balance available in the Public Trusts Administration Fund and the estimated income and expenditure (including capital expenditure) of the Charity Organisation and ensure that the levy has reasonable correlation with the services rendered or to be rendered or any expenditure incurred or to be incurred for carrying out the purposes of this Act. For this purpose, the rates of contribution may be increased or decreased or reductions or remissions may be granted, from time to time prospectively or retrospectively, by the State Government, by any order or orders made, provided in this section and published in the Official Gazette. (Mah. Act No. XXXVof 1977). (M. G. G., Pt. IV, dt. 18.8.1977, page 260)

Thus, before determining to collect any contribution or its rate, the Charity Commissioner has to take into account the balance lying with him in the Public Trusts Administration fund and its estimated income and expenditure and

ensure a reasonable correlation between the contribution to collect and the cost of services rendered.

6. The PIL 40/2007 before Hon. Bombay High Court

Taking cue from judgment of Hon. SC as above, a PIL was filed before Hon. Bombay High Court (PIL 40/2007) to decide that the contribution collected by Hon. CC in the state is illegal and must be stopped. Two more PILs (1780 and 1864 of 2007) were also filed for the same matter by two different trusts and all the cases are tagged together.

According to the affidavit filed by the State Govt. and Hon. CC before Hon. High Court in the PIL, an amount of Rs.248 crores is lying with the Hon. CC in the fund. On questions asked by Hon. High Court about the proposed expense from the said fund, the State Govt. and Hon. CC could not file any explanation apart from repeated opportunities given. After passing strictures on the administration of State Govt. and offices of Hon. CC, Hon. High Court has passed an interim order on 25-9-2009, restraining Hon. CC from collecting any fee hence forth in the State until further orders in the matter. Until last hearing on 25-10-2021, no explanation from either the State Govt. or Hon. CC is filed before the Hon. High Court and the interim orders passed on 25-9-2009 continue to-date.

7. Contributions collected by Hon. CC offices even after the Hon. High Court order

As any collection by way of Contribution in excess of the funds required by the Hon. CC's offices, partakes the nature of tax collected without the authority of law and has to be refunded to the trusts concerned.

8. The online filing of the Accounts and Verification form generated

As per the recommendations in view to facilitate the smooth and hassle free submission of annual audited accounts to the Hon. CC's offices, an online facility is developed. As per Circular no.504 dt. 22-06-2017, it is compulsory for every trust to file the annual accounts through the online portal only.

The issue in the online uploading of the account statements is that, the figures in Form IXC are auto picked up by the system without any option to change the same according to the exemptions specified u/s 58 and/or any by various circulars.

There is possibility to show NIL contribution by filling columns of allowable expenditure etc. However, there is no provision to show exemptions allowed. When one does not make any manual effort to show expenditure in such a manner to make the contribution NIL, the form generated shows a contribution due.

This verification form is to be printed and signed by the Auditor as well as the Trustees and is required to be physically filed in the Hon. CC's offices.

9. Contribution shown in the online Verification form generated

The Summary report or the verification form so generated upon online filing of the accounts statements, invariably shows a Contribution due. This is even in the cases directly exempted under the Act itself u/s 58 and/or by various circulars of Hon. CC.

A fear or doubt is raised as to whether a recovery proceeding may be initiated by Hon. CC's offices at some later stage for the amount reflected in the said Summary report as it is verified by the trustees as well as the Auditor.

This Contribution shown due in the Summary report generated is not recoverable at all. Hence, the doubt is not correct and the fear is misplaced.

The reasons are as under-

- 1) The fee collected by way of Contribution u/s 58 of the Act is held as *ultra-virus* until the time there is balance lying in the Public Trusts Administration Fund. As per the Affidavit filed by State Govt. and Hon. CC's office, there was a balance of Rs.248 crores and expenditure beyond Rs.4/5 crores could not be demonstrated before the Hon. High Court.

Applying a simple logic and current rate of earning on the State Govt. savings, the collection although un-authorised but collected due to lack of knowledge of trusts in general, there is very weak possibility that the balance is utilised fully especially in the backdrop of the facts described in the sub-para (4) below.

- 2) In respect of recovery we may also examine Sec. 77 beneficially which reads as under-

"77. Recovery of sums due under sections 18, 20, 41, 79A, 79C, or 79CC.

All sums payable under sections 18, 20, 41, 79A, 79C, or 79CC or under any rule, if not paid shall notwithstanding anything contained in any law be recoverable as an arrear of land revenue."

It must be carefully noted that the recovery is specified of the dues under specific sections which does not include Section 58. All the dues specified u/s 77 for recovery are other than the Contribution u/s 58. Hence, the doubt raised about recovery at any later stage of the wrongly reflected Contribution due in the online generated acknowledgment is misplaced.

- 3) The procedure specified in Rule 32 (5) and (6) also needs to be discussed which reads as under -

(5) Every auditor, auditing the accounts of a public trust under sub-section (2) of section 33, shall annex to the copy of the balance-sheet income and expenditure account required to be forwarded to the Deputy or Assistant Charity Commissioner under sub-section (1) of section 34 statement of the income of the trust liable to contribution in the form Schedule IX-C hereto:

Provided that, the auditor shall forward a copy of the statement of Income of the trust liable to contribution in the form IX-C to the concerned trustee for enabling the said

trust to remit to the Deputy or Assistant Charity Commissioner the contribution payable in advance according to the provisions of sub-section (5) of section 58.

(6) As soon as the statement of the income of the trust liable to contribution is received from the Auditor under sub-rule (5), every trustee of the public trust liable to pay contribution, shall, while filing a copy of the balance sheet and income and expenditure account under sub-section (1A) of section 34, pay in advance the whole amount of the annual contribution of the public trust computed at the rate fixed under sub-section (1) of section 58, and as shown in the Schedule IX—C, to the Deputy or Assistant Charity Commissioner of the region or sub-region or to the Charity Commissioner if the Charity Commissioner required him to do so.

In this connection, it may kindly be noted that the summary report generated and verification form are available to be downloaded in word format.

CAs/Auditors and trustees must carefully put a remark while verifying the summary report that the figures in Schedule IXC are auto picked-up and that there is no provision in the online system to reflect the specific exemptions like Educational trust etc. u/s 58, and that the auto reflected figure of Contribution in the verification form is not correct.

Further in case of other Trusts and in case of exempted trusts too, a note stating clearly that Hon. Bombay High Court has stayed the collection of Contribution in the entire state for all the trusts in the order dt. 25-09-2007 in PIL-40/2007 must be clearly be stated before signing the said verification form.

The physical Schedule IXC form certified by the auditor and the trustees must also reflect the specific remarks as above.

This is necessary as the law casts a responsibility on the auditor to certify the Schedule IXC and to compute the contribution due. Hence, the same must be certified with the qualificatory remark as above, so that no misleading inference can be drawn from the said verification form at any point of time. Sample remarks could be on the following lines –

The figures in Form IXC are auto picked up and there is no provision or tab provided to reflect the trusts specifically exempted from Contribution u/s 58. Hence, the figure reflected as Contribution due as above is not correct.

The trust is run exclusively for the purpose of secular education and as per Rule 32(i) read with Section 58 of the Bombay Public Trusts Act, 1950, is completely exempted from payment of contribution.

Further as informed by the trust, as per the order of Bombay HC in case of PIL No. 40/2007, dt.25-09-2009 any of the offices of Hon. Charity Commissioner are not allowed to collect any contribution from any trust.

This will safeguard the trust, trustees and the professional also against any future misdirected efforts by any of Hon. CC's offices.

- 4) It may be interesting to check the useful facts that prompted the PIL 40/2007. After the order of Hon. Supreme Court in Salvation Army's case and in the wake of the then newly enacted Right to Information Act (RTI) 2005 two public spirited gentlemen, Mr. Manaharbhai Shah and Mr. Girishbhai Shah, trustees of the Mumbai based Sheth Vadilal Sarabhai Derasarji Trust could obtain valuable facts and figures from the office of the Charity Commissioner under an RTI application, which ultimately prompted the PIL in 40/2007.

According to the data then provided by the Office of the Charity Commissioner (Maharashtra State) it was observed that contributions collected over the years from various public charitable and religious trusts, for the 'Public Trusts Administration Fund' had been invested in Fixed Deposits of various Banks **aggregating Rs. 155,47,83,162 (as on March 2006). The return on this investment was Rs. 8,73,92,316.**

Based on the information received a view was taken that between the Financial Years 1996-97 to 2005-06 the Office of the Charity Commissioner has collected 'excess contribution' (i.e. levy of contribution beyond the expenditure incurred by the Office) to the tune of Rs. 165,15,61,770.22. The interest income on this 'excess contribution' alone was to the tune of Rs. 69,30,20.912.59.

On the other hand, the Office of the Charity Commissioner at that point in time had annual office expenditure amounting to Rs.9,29,44,893.00 and it was felt that the interest and other income alone was sufficient to meet expenses of the Charity Commissioner's Office. Any shortfall could easily be made up from the surplus funds.

This information is sufficient to prove that, after the data was obtained the Hon. CC's offices has not stopped collecting the Contribution apart from the stay by Hon. High Court and resultantly the figures stated above must have been long back surpassed.

- 5) Even if the balance in the said fund is utilised the same has to be demonstrated before Hon. High Court as the interim order dt. 25-9-2009 in PIL 40/2007 is still in force. Until the time this is done, no contribution can be collected from any trust. Considering the figures stated in the preceding para, it seems difficult that the funds would be exhausted in near future.

In view of the foregoing discussion, I personally think it unnecessary to discuss the legal binding force of the online summary report generated, verified by trustees and auditor, which is procedural only, for the purpose of recovery of the amount of Contribution, especially in the background of Hon. Supreme Court and Hon. Bombay High Court judgments.

For the reasons stated above, with the due precaution, the doubt raised about recovery at any later stage of the wrongly reflected Contribution due in the online generated acknowledgment is misplaced.