Understanding the Maharashtra Public Trusts Act, 1950, Accounts & Audit Procedures

By

CA Pranav Ashtikar

Amravati

E-mail – pranav@kelkarcoca.com

Mob.: - 8956005901, 9579404594

What is "Trust"?

A "trust" is an **obligation annexed to the ownership of the 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 & the owner.

(Section 3 of Indian Trusts Act, 1882)

Essential ingredients of Charitable Trusts

In the case of ***Hanmantram Ramnath Vs CIT [1946] 14 ITR 716 (Bom),*** it was held that “Although the Indian Trusts Act, 1882 does not specifically apply to charitable trusts, there are three certainties required to create a charitable trust. They are: -

(i) A declaration of the Trust which is binding on settlor,

(ii) Setting apart definite property and the settlor depriving himself of the ownership thereof, and

(iii) A statement of the objects for which the property is thereafter to be held *i.e.* the beneficiaries.

Classification of Trusts

1. Private Discretionary Trust.
2. Public Trust.

Private Discretionary Trusts

A discretionary Trust is one which gives a beneficiary no right to any part of income of the trust property, but vests in the trustees a discretionary power to pay him, or apply for his benefit, such part of the income as they think fit.

[CWT Vs Estate of HMM Vikramsinhji of Gondal [2014] 225 Taxman 166 (SC)]

Public Trust

(Section 2(13) of the Maharashtra Public Trusts Act, 1950)

- "Public Trust" means an express or constructive trust for either a public religious or charitable purpose or both & includes a temple, a math, a Waqf, Church, Synagogue, agiary or other place of public religious worship, a dharmada or any other religious or charitable endowment & a society formed either for religious or charitable purpose or for both & registered under the Societies Registration Act, 1860.

Is the Trust Deed necessary to create a Trust?

- A formal deed is not necessary to constitute a public trust, still less to constitute a legal obligation binding on the trustees **{Jai Narayan Jai Govind Vs Controller of E.D. [1963] 49 ITR (ED) 105 (Mad)}.**

- A charitable trust may be created by words sufficient to show the intention. So long as there is clear manifestation of intention to create a charitable trust & there is a formal vesting of the ownership of the property, the dedication is complete **{CIT Vs Sant Baba Mohan Singh [1979] 118 ITR 1015 (All)}.**

Is the Trust Deed necessary to create a Trust?

For creation of a valid trust, it is not necessary to execute a "Trust Deed". The trust may be testamentary (deed in writing) or non-testamentary (without written deed). It is now well settled that a formal deed of trust is not absolutely essential to constitute a trust still less to constitute a legal obligation binding the trustee.

Radhasoami Satsang Vs CIT [1992] 193 ITR 321 (SC).

Duties of the Trustees

(Under Maharashtra Public Trusts Act, 1950)

- A trustee of every public trust shall administer the affairs of the trust & apply the funds & properties thereof for the **purpose & objects** of the trust in accordance with the terms of the trust, usage of the institution & lawful directions which the Charity Commissioner or court may issue in respect thereof, & **exercise the same care as a man of ordinary prudence does when dealing with such affairs, funds or property, if they were his own**. [Section 36A(1)]

Duties of the Trustees
(Under Maharashtra Public Trusts Act, 1950)

- No trustee shall borrow moneys (whether by way of mortgage or otherwise) for the purpose of or on behalf of the trust of which he is a trustee, except with the previous sanction of the Charity Commissioner & subject to such conditions & limitations as may be imposed by him in the interest or protection of the trust [Section 36A(3)]
- The Charity Commissioner or the Joint Charity Commissioner, as the case may be, shall decide the application for borrowing money from the Bank or Financial Institution forthwith & preferably within a period of 15 days, if the Bank of the Financial Institution has provisionally sanctioned the loan [First Proviso to Section 36A(3)]

Duties of the Trustees
(Under Maharashtra Public Trusts Act, 1950)

- No trustee shall borrow money for his own use from any property of the public trust of which he is a trustee [Section 36A(4)];
- In the case of a trustee who makes a gift of debentures or any deposit in his business or industry the trustee shall not be deemed to have borrowed from the trust for his own use [First Proviso to Section 36A(4)].

Duties of the Trustees
(Under Maharashtra Public Trusts Act, 1950)

- A trustee of a public trust which has an annual income exceeding the prescribed amount shall, **at least one month before the commencement of each accounting year**, prepare & submit in such form or forms as may be prescribed, a budget showing the probable receipts & disbursements of the trust during the following year to the Charity Commissioner. (Section 31A).
- The budget to be submitted by a trustee of a public trust which has an annual income exceeding Rs. 5,000.00 in the case of religious trust & Rs. 10,000.00 in case of other trusts in Form specified in Schedule VII-A (Rule 16A of BPT Rules, 1951)

Duties of the Trustees
(Under Maharashtra Public Trusts Act, 1950)

- Preparation & signing of Register of Movable & Immovable Properties in the Form given in Schedule X-AA [Section 36B of MPT Act, 1950 read with Rule 24A of BPT Rules, 1951]
- It is the duty of the Trustees to produce such register before the Auditor during the Audit.
- The trustees shall rectify the defects or inaccuracies mentioned in the audit report with respect to such register within 3 months from the date on which the report is sent to the trustees.

Duties of the Trustees
(Under Maharashtra Public Trusts Act, 1950)

- The trustees shall furnish "Change Report" in respect of any changes in the entries in the books, indices & other registers maintained by the Deputy or Assistant Charity Commissioner within 90 days from the occurrence of such Change (Section 22).
- The Change Report may relate to Name & Addresses of Trustees, Changes in Immovable Properties or any other thing.

Duties of the Trustees
(Under Maharashtra Public Trusts Act, 1950)

- The trustees shall be bound to deposit the money in any Scheduled Bank, as defined in the Reserve Bank of India Act, 1934, in the Postal Savings Bank or in a Co-operative Bank approved by the State Government for the purpose or to invest it in public securities [Section 35(1)].
- The Charity Commissioner may by general or special order permit the trustee of any public trust or classes of such trusts to invest the money in any other manner [Second proviso to Section 35(1)].

Duties of the Trustees
(Under Maharashtra Public Trusts Act, 1950)

- No sale, exchange or gift of any immovable property & no lease for a period exceeding 10 years in the case of agricultural land or for a period exceeding 3 years in the case of non-agricultural land or building, shall be valid without the previous sanction of the Charity Commissioner [Section 36(1)].
- The Charity Commissioner shall not sanction any lease for a period exceeding 30 years [Section 36(2)].

Duties of the Trustees

(Under Maharashtra Public Trusts Act, 1950)

- **Every trustee of a public trust shall keep regular accounts** [Section 32(1)].
- Such account shall be kept in such form as may be approved by the Charity Commissioner & shall contain such particulars as may be prescribed [Section 32(2)].
- Every trustee of a public trust shall keep regular accounts of **all receipts & movable & immovable property & of all encumbrances created on the trust property & of all payments & alienations** made on behalf of the public trust of which he is a trustee. The accounts shall contain such particulars as in the opinion of the Charity Commissioner will facilitate preparation of the Balance Sheet & Income & Expenditure A/c in the form of Schedules VIII & IX [Rule 17 of Bombay Public Trusts Rules, 1951].

Auditing the Accounts of the Public Trust

- As per Section 33(2), the accounts of the public trust shall be audited annually by a person who is a chartered accountant within the meaning of the Chartered Accountants Act, 1949 or by such persons as the State Government may, subject to any conditions, authorize in this behalf.
- The Auditor should not be in any way interested in or connected with the public trust [Proviso to Section 33(2)].
- As per Section 33(3), every auditor acting U/s 33(2) shall have access to the accounts & to all books, vouchers, other documents & records in the possession of or under the control of the trustee; & it shall be the duty of the trustee to make them available for the use of the auditor.

Who is liable to prepare Balance Sheet?

- As per section 34(1), it shall be the **duty of every auditor** auditing the accounts of a public trust U/s 33 **to prepare a Balance sheet & Income & Expenditure Account & to forward a copy of the same along with a copy of his report to the trustee, & to the Deputy or Assistant Charity Commissioner** of the region or sub-region or to the Charity Commissioner, if the Charity Commissioner requires him to do so.

Reporting Responsibilities of the Auditor

- As per Section 34(2), the auditor shall in his report specify all cases of irregular, illegal or improper expenditure, or failure or omission to recover moneys or other property belonging to the public trust or of loss or waste of money or other property thereof & state whether such expenditure, failure, omission, loss or waste was caused in consequence of breach of trust, or misapplication or any other misconduct on the part of the trustees or any other person.
- In addition to above, Rule 19 of Bombay Public Trust Rules, 1951 also specifies the contents of auditor’s report.

Clause-by-Clause Analysis of Auditor's Report

(Under Section 34 of MPT Act, 1950 read with Rule 19(1) of BPT Rules, 1951)

- Whether the accounts are maintained regularly & in accordance with the provisions of the Act & the rules [Rule 19(1)(a)];
- Whether the receipts & disbursements are properly & correctly shown in the accounts [Rule 19(1)(b)];
- Whether the cash balance & vouchers in the custody of the manager or trustee on the date of the audit were in agreement with the accounts (Rule 19(1)(c)];

Clause-by-Clause Analysis of Auditor's Report

(Under Section 34 of MPT Act, 1950 read with Rule 19(1) of BPT Rules, 1951)

- Whether all books, deeds, accounts, vouchers or other documents or records required by the auditor were produced before him [Rule 19(1)(d)];
- Whether a register of movable or immovable properties is properly maintained, the changes therein are communicated from time to time to the regional office, & the defects & inaccuracies mentioned in the previous audit report have been duly complied with [Rule 19(1)(e)];
- Whether the manager or trustee or any other person required by the auditor to appear before him did so & furnished the necessary information [Rule 19(1)(f)];

Clause-by-Clause Analysis of Auditor's Report

(Under Section 34 of MPT Act, 1950 read with Rule 19(1) of BPT Rules, 1951)

- Whether any property or funds of the trust were applied for any object or purpose other than the object or purpose of the trust [Rule 19(1)(g)];
- The amounts outstanding for more than one year & the amounts written off; if any [Rule 19(1)(h)];
- Whether the tenders were invited for repairs or construction involving expenditure exceeding Rs. 5,000.00 [Rule 19(1)(i)];
- Whether any money of the public trust has been invested contrary to the provisions of section 35 [Rule 19(1)(j)];

Clause-by-Clause Analysis of Auditor's Report

(Under Section 34 of MPT Act, 1950 read with Rule 19(1) of BPT Rules, 1951)

- Alienations, if any, of the immovable property contrary to the provisions of section 36 which has come to the notice of the auditor [Rule 19(1)(k)];
- Any special matter the auditor may think fit or necessary to bring to the notice of the Deputy or Assistant Charity Commissioner [Rule 19(1)(l)];
- All cases of irregular, illegal or improper expenditure or failure or omission to recover moneys or other property belonging to the public trust or of loss, or waste of money or other property thereof, caused in consequence of breach of trust or mis-application or any other misconduct on the part of the trustee or any other person while in the management of the trust [Rule 19(1)(m)];
- Whether the budget has been filed in the form provided by Rule 16A [Rule 19(1)(n)];

Clause-by-Clause Analysis of Auditor's Report

(Under Section 34 of MPT Act, 1950 read with Rule 19(3) of BPT Rules, 1951)

- Whether the maximum & minimum number of the trustees is maintained [Rule 19(3)(a)];
- Whether the meetings are held regularly as provided in such instrument [Rule 19(3)(b)];
- Whether the minute book of the proceedings of the meeting is maintained [Rule 19(3)(c)];
- Whether any of the trustees has any interest in the investment of the trust [Rule 19(3)(d)];

Clause-by-Clause Analysis of Auditor's Report

(Under Section 34 of MPT Act, 1950 read with Rule 19(3) of BPT Rules, 1951)

- Whether any of the trustees is a debtor or creditor of the trust [Rule 19(3)(e)];
- Whether the irregularities pointed out by the auditors in the accounts of the previous year have been duly complied with by the trustees during the period of audit [Rule 19(3)(f)].

Time for Audit & submission of Audit Report

- The trustee shall get the accounts audited within six months of the date of balancing the accounts under sub-section (1) of section 33, & the auditor shall forward a copy of the Balance-Sheet & the Income & Expenditure A/c along with his audit report to the Deputy or Assistant Charity Commissioner within a fortnight of the audit [Rule 21 of the Bombay Public Trusts Rules, 1951].

Issues that need adequate consideration by the Auditors

- Investments contrary to the provisions of Section 35, E.g., Investments in FDRs of Co-Operative Societies without prior approval from Charity Commissioner.
- Non-receipt of subscription from the Trustees & Members as per the terms of Trust Deed / Memorandum of Association of Society.
- Leasing the Trust Property for a period exceeding 30 years. Similarly, sanction of Charity Commissioner pending for lease period less than 30 years.

Issues that need adequate consideration by the Auditors

- Alienation by way of sale, exchange or gift of any immovable property & leasing for a period exceeding 10 years in case of agricultural land or for a period exceeding 3 years in the case of non-agricultural land or a building without prior sanction of the Charity Commissioner.
- Improper verification of title to trust properties.
- Non-disclosure of stock in hand in the Audited Financial Statements in cases of trust carrying on trading or manufacturing activities.
- Trustee borrowing money for the purpose of or on behalf of the trust of which he is a trustee without previous sanction of the Charity Commissioner.

Issues that need adequate consideration by the Auditors

- Long outstanding receivables remaining unrealized which are subsequently written off.
- Consistent omission or failure to recover money due to the Trust.
- Occurrence of expenditure disproportionate to the budgeted amount.
- Wrongful calculations of credits to IP Fund U/s 41AA (at actual receipt basis instead of gross billed amount). Similarly, non-billable services debited to the IP Fund. (Sanjiv Gajanan Punalekar Vs State of Maharashtra in PIL No. 3132/2004 judgement dated 17.08.2006).

Issues that need adequate consideration by the Auditors

- Non-quantification & reporting of materials internally consumed by the Trust.
- Reverse calculation of balances on the basis of Receipt & Payment A/c not matching with the balances disclosed in Audited Financial Statements.
- Unreconciled balances written off without proper verification & approval.

Questions

THANK YOU

CA Pranav Ashtikar

Amravati

Mob. No. 8956005901, 9579404594

E-Mail – pranav@kelkarcoca.com