



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

PUBLIC INTEREST LITIGATION NO.40 OF 2007

Devendra Prakash Shah and Ors.

...Petitioners

V/s.

The State of Maharashtra and Anr.

...Respondents

**WITH
CIVIL APPLICATION NO.37 OF 2018
IN
PUBLIC INTEREST LITIGATION NO.40 OF 2007**

The State of Maharashtra through
Assistant Charity Commissioner

...Applicant

In the matter between

1. Devendra Prakash Shah & Ors.

...Petitioners.

V/s.

The State of Maharashtra and Anr.

...Respondents

**WITH
CIVIL APPLICATION NO.118 OF 2016
IN
PUBLIC INTEREST LITIGATION NO.40 OF 2007**

The Charity Commissioner,
Maharashtra State

...Applicant

V/s.

Devendra Prakash Shah and Ors.

...Respondents

**WITH
INTERIM APPLICATION NO.19115 OF 2022
IN**

PUBLIC INTEREST LITIGATION NO.40 OF 2007

Shri Navjivaj Jain Shwetambar
Murtipuja Sang

...Applicant

V/s.

Devendra Prakash Shah and Ors.

...Respondents

**WITH
CIVIL APPLICATION (stamp) NO.19523 OF 2019
IN
PUBLIC INTEREST LITIGATION NO.40 OF 2007**

Devendra Prakash Shah

...Applicant

V/s.

The State of Maharashtra and Anr.

...Respondents

**WITH
WRIT PETITION NO.1864 OF 2007
(ORIGINAL SIDE)**

Seth Vadilal Sarabhai Derasarji and
Ors.

...Petitioners

V/s.

The State of Maharashtra and Anr.

...Respondents

**WITH
NOTICE OF MOTION NO.298 OF 2018
IN
WRIT PETITION NO.1864 OF 2007
(ORIGINAL SIDE)**

The Charity Commissioner,
Maharashtra State

...Applicant

In the matter between

Seth Vadilal Sarabhai Derasarji and
Ors.

...Petitioner

V/s.

The State of Maharashtra and Anr.

...Respondents

**WITH
WRIT PETITION NO.1780 OF 2007
(ORIGINAL SIDE)**

Mahuva Yuvak Samaj and Anr.

...Petitioners

V/s.

The State of Maharashtra and Anr.

...Respondents

**WITH
NOTICE OF MOTION NO.299 OF 2018
IN
WRIT PETITION NO.1780 OF 2007
(ORIGINAL SIDE)**

The Charity Commissioner
Maharashtra State

...Applicant

In the matter between

Mahuva Yuvak Samaj and Anr.

...Petitioners

V/s.

The State of Maharashtra and Anr.

...Respondents

Mr. Prafull B. Shah with Ms. Gunjan Shah for the Petitioner in
PIL/40/2007.

Mr. Anil R. Mishra for the Petitioner in WP/1780/2007.

Dr. Birendra Saraf, Advocate General with Mr. Milind More,
Addl. GP for Respondent -State in WP/1864/2007 &
WP/1780/2007.

Dr. Birendra Saraf, *Advocate General with Mrs. Neha S. Bhide, Govt. Pleader, Mr. P.P. Kakade, Addl. GP, Mr. Manish Pabale, AGP and Ms. Apurva Thipsay, 'B' Panel counsel for Respondent -State in PIL/40/2007.*

Mr. Kushal Harnesha *with Mr. Ameet Mehta and Mr. Nirav Marjadi i/b. M/s. Solicis Lex for the Applicant in IA/19115/2022.*

**CORAM: ALOK ARADHE, CJ. &
SANDEEP V. MARNE, J.**

Dated: 16 JULY 2025.

Order: (PER: SANDEEP V. MARNE, J.)

1) The Public Interest Litigation and two Writ Petitions are filed challenging the decisions of the State Government fixing and recovering compulsory contributions from every Public Trust to the Public Trusts Administration Fund (**Fund**) established under the provisions of Section 57 of the Maharashtra Public Trusts Act, 1950 (**MPT Act**).

2) According to the Petitioners, the State Government is unnecessarily and excessively collecting contributions from every Public Trust and that most of such collected amounts are remaining unutilised. Therefore, in addition to seeking a restraint order from collecting any more contributions, prayers are also made seeking refund of contributions already recovered from Public Trusts.

3) We have heard Mr. Shah, the learned counsel appearing for the Petitioner in PIL No.40 of 2007 and Mr. Mishra, the learned counsel appearing for the Petitioner in Writ Petition No.1780 of 2007. None has appeared for the Petitioner in Writ Petition No.1864 of 2007. We have also heard Dr. Saraf, the learned Advocate General appearing for the State Government.

4) Section 57 of the MPT Act provides for formation of Public Trusts Administration Fund. The Fund vests in the Charity Commissioner. Section 57 provides thus:

57. Public Trusts Administration Fund.

(1) There shall be established a fund to be called the Public Trusts Administration Fund. The Fund shall vest in the Charity Commissioner.

(2) The following sums shall be credited to the said Fund, namely :—

(a) fees leviable under section 18 ;

(b) Contributions made under section 58 ;

(c) the amount from the funds or the portion thereof credited under section 61 ;

(d) any sum received from a private person ;

(e) any sum allotted by the State Government or any local authority; and

(f) any other sum which may be directed to be credited by or under “the provisions of this Act or the Inter- State Corporation Act, 1957 (Bom. XXVIII of 1957) or the Bombay Statutory Corporations (Regional Reorganisation) Act, 1960 (Bom. XXI of 1960).

5) Section 58 of the MPT Act empowers the State Government to require every Public Trust to pay to the Fund, contributions not exceeding 5% of their gross annual income or of the gross annual collection. The parameters to be considered for determining rates of contributions are also set out in Section 58(4) of the MPT Act. Section 58 of the MPT Act reads thus:-

58. Contribution by public trusts to Public Trusts Administration Fund.

(1) Subject to the provisions of this section, every public trust shall pay to the Public Trusts Administration Fund annually such contribution at a rate or rates not exceeding five per cent, of the gross annual income, or of the gross annual collection or receipt, as the case may be, as may be notified, from time to time, by the State Government, by order published in the Official Gazette. The contribution shall be paid on such date and in such manner as may be prescribed.

The contribution payable under this section shall—
(i) in the case of a dharmada, be fixed at a rate or rates on the gross annual collection or receipts of the dharmada;
(ii) in the case of other public trusts, be fixed at a rate or rates on the gross annual income of such public trust.

Explanation 1.— For the purposes of this sub-section ‘gross, annual collection or receipt’ or ‘gross annual income’ does not include any donations received by any dharmada or public trust from another dharmada or public trust registered under this Act.

Explanation [2].— (a) For the purpose of this sub-section ‘gross annual income’ means gross income from all sources in a year (including all donations and offerings), but does not include any payment made or anything given with a specific direction that it shall form part of the corpus of the public trust, nor include any deductions which the State Government may allow by rule:

Provided that, the interest or income accruing from such payment made or thing given in the years following that in which they were

given or made shall be taken into account in calculating the gross annual income.

(b) Where a public trust conducts a business or trade as one of its activities for the purpose of assessing the contribution as respects that activity, the net annual profits of such business or trade shall be treated as the gross annual income of the business or trade.

(2) The State Government may exempt from payment of contribution public trusts which are exclusively for the purpose of the advancement and 6[propagation of education, or exclusively for the purpose of water conservation, or exclusively for the purpose of development of forest, horticulture or agriculture, or exclusively for the purpose of welfare of the Schedule Castes, Schedule Tribes, Denotified Tribes, Nomadic Tribes or Women, or exclusively for the purpose of medical relief or veterinary treatment of animals, or exclusively for the purpose of relief of distress caused by scarcity, drought, flood, fire or other natural calamity, and may also exempt from the payment of contribution any donations forming part of the gross annual income and which are actually spent on the relief of distress caused by scarcity, drought, flood, fire or other natural calamity. If any question is raised whether a trust falls in any exempted class of trusts or whether any donations are donations which qualify for exemption from contribution under this subsection, the decision of the State Government on the question, obtained in the manner prescribed, shall be final.

(3) The State Government may, by order published in the Official Gazette, reduce, whether prospectively or retrospectively, the rate or rates at which the contribution fixed under sub-section (1) is payable by any class of public trusts and may in like manner remit the whole of such contribution or any part thereof, regard being had to the nature of the objects of the class of public trusts, or the smallness of the income thereof.

(4) 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 any 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 an order or orders made as provided in this section and published in the Official Gazette.

(5) Notwithstanding anything contained in the foregoing provisions in this section, on and after the commencement of the Bombay Public Trusts (Amendment) Act, 1983 (Mah. XXIX of 1983), every trustee of a 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 this section, according to specified percentage of the gross annual income, or of the gross annual collection or receipt, as the case may be, as shown in the balance sheet and income and expenditure account, in such manner, and subject to such adjustments to be made after the contribution payable is assessed, as may be prescribed.

6) Thus under the provisions of Section 58 of the MPT Act different parameters are set out for making contributions to the Fund depending on the nature of the public trusts. The State Government is empowered to prescribe the exact rates of contributions for various kinds of trusts by publishing orders in the official gazettes.

7) From time to time the State Government has issued orders under Section 58(1) of the MPT Act fixing the rates at which contributions were required to be made by the Public Trusts. By order dated 20 April 2005, the rate of contribution to be made for the period from 1 April 2003 to 31 March 2004 was fixed at 2%. By subsequent order dated 18 March 2008, rate of contribution for the period from 1 April 2005 to 31 March 2006 was fixed at 2%.

8) Petitioners have challenged the orders of fixation of percentage of contribution by the State Government by issuance

of orders under Section 58(1) of the MPT Act. They claim that the contributions recovered from the Trusts are excessive. Petitioners have also given the figures of the contributions already made to the Fund at the time of filing of the Petitions. According to them considering the amounts already available in the Fund with the Charity Commissioner, no further contributions were necessary. That there were surplus Funds then available with the Charity Commissioner. It is contended that the contributions so collected had resulted in collections being far more than that the requirement and that the parameters set out in Section 58(4) of the MPT Act were not being complied with while fixing the rate of contributions.

9) By interim order dated 25 September 2009 passed in Civil Application No.1 of 2009, this Court noted availability of sufficient fund lying with the Charity Commissioner to meet its expenses. While admitting the Petitions on 25 September 2009 State Government was restrained from collecting any amount from the Trusts towards the Fund. However, the liberty was granted to the Charity Commissioner to utilise the Fund already lying with its office with further liberty to move application in the event of necessity for additional Funds. Order dated 25 September 2009 is extracted below for facility of reference:-

1. Heard.

2. Rule.

3. Mr. Belosay, the learned Special Counsel appearing for the State of Maharashtra sought leave to permit the Principal Secretary and Remembrancer of Legal Affairs, Law and Judiciary Department, Mantralaya, Mumbai to address this court. Mr. Gilani, the Principal Secretary and Remembrancer of Legal Affairs, Law and Judiciary Department states that any decision which influences the voters is covered by the code of conduct and is not to be implemented. The subject matter of this petition has no concern with implementation of any decision which would influence the voters in the assembly. The subject matter pertains to the amount lying in deposit with the Charity Commissioner running into Rs.247 Crores which are not spent since the last 7 years. Many elections have taken place since then. The affidavit filed by the Principal Secretary and Remembrancer of Legal Affairs, Law and Judiciary Department, Mantralaya does not even whisper that the code of conduct is an impediment in the State in issuing directions to the Charity Commissioner to utilize the funds collected under section 58 of the Bombay Public Trust Act, 1951. Therefore, this submission on the part of the State as well as the learned Senior Advocate appearing for the Charity Commissioner does not find favour with this court. The sum total of the expenses which are approved are enumerated in para 6 of the affidavit, the total does not go more than Rs.8 crores, compared to the funds which are lying in deposit in the office of the Charity Commissioner. In para 7 of the affidavit, what has been stated is in respect of the future projection for which the funds would be required.

Unless this is implemented, the immediate requirement of the funds do not arise at all. This only shows the apathy on the part of the State Government in implementing the object and purpose of the Act.

4. Mr. Gilani states that the apathy is not on the part of the State Government but the Charity Commissioner. This is strongly refuted by Mr. Gangal who stated that the proposal is sent to the State Government which is pending with them. The stand taken by the State Government is in respect of the package in the proposal sent by the Charity Commissioner which hardly comes to Rs.4/5 crores but no proposal has been received by the State Government to utilize the huge sum of Rs.247 crores. It appears now that the Government has become aware of the problem and have constituted three Committees for regions like Vidharba, Marathawada and rest of Maharashtra to identify, suggest and help in preparing the plans and estimates for the infrastructural development, like acquiring land, constructing buildings for office premises and residential quarters etc. in the long term plan. We have already observed that this is still at the infant stage. What

we find from the affidavit of the two authorities is that they are trying to put the blame on each other, rather than taking any concrete steps for utilization of the funds.

5. Mr.P.B. Shah, the learned counsel for the petitioner has placed reliance on the decision of the Supreme Court rendered in the case of The State of Maharashtra and Ors. Vs. The Salvation Army, Western India Territory and The State of Maharashtra and Ors. Vs. Shri Lohana Maha Paridhad, A Public Trust reported in (1975) 1 Supreme Court Cases 509 for seeking interim relief. On considering the aforesaid decisions, we are prima facie satisfied that more than sufficient funds are lying with Charity Commissioner to meet its expenses.

6. Therefore, in the given facts and circumstances, we are inclined to pass interim order in terms of prayer clause (b) with liberty to the Charity Commissioner as well as the State Government through the Principal Secretary and Remembrancer of Legal Affairs, Law and Judiciary Department, Mantralaya to move this court as and when necessity of funds known as Public Trust Administration Funds arises so that after hearing the parties, the court can pass appropriate orders. The interim order should not be misconstrued that this court has restrained the Charity Commissioner to spend the funds already lying with the Charity Commissioner for its requirement. In so far as prayer clause (c) is concerned, this court has already passed an order on 27.02.08.

7. Application stands disposed of accordingly.

10) According to the learned counsel for Petitioners, the interim arrangement of stay on contributions needs to be made absolute as there is no necessity of collection of any contributions to the Fund.

11) During the course of his submissions, the learned Advocate General has submitted that after 25 September 2009, the Charity Commissioner has not recovered any further amounts from any Trusts. The Charity Commissioner has also

placed on record the report of its office by way of affidavits and civil applications. Last such affidavit is filed on 6 August 2022 setting out the details of the Fund available with the Charity Commissioner's office and its requirement. Perusal of the said affidavit dated 6 August 2022 indicates that the State Government is required to bear the expenditure towards salary and establishment of office of Charity Commissioner. The affidavit also sets out the expenditure incurred by the office of Charity Commissioner as well as the expenditure needed for the future proposals.

12) The affidavit dated 6 August 2022 indicates that after passing of interim order dated 25 September 2009 by this Court, the State Government has granted funds to the Charity Organisation for payment of salary, pension and for incurring related expenses and the Charity Organisation has reimbursed several amounts to the Government from time to time. The affidavit indicates that the expenditure incurred by the State Government for operationalisation of the Charity Commission office during 2009-10 and 2021-22 was Rs.492.27 crores. It is further pointed out that the State Government has also accorded sanction for construction of regional offices and for other proposals such as purchase of computer hardware, annual maintenance, etc. and the amount required for said part of proposals is Rs.40.78 crores, out of which Rs.18.68 crores is already paid and the remaining amount of Rs.22.09 crores is yet to be paid. The affidavit indicates that total amount immediately

required for reimbursement to the State Government and for other purposes is Rs.570.67 crores whereas current balance in the Fund as on 21 June 2022 was only Rs.43.18 crores. The relevant part of affidavit dated 6 August 2022 reads thus:-

5. I say that the necessary information in the aforesaid regard was called from each revenue District. Hereto annexed and marked as Exhibit "C" is the copy of the said order. The formation received from all the districts in the prescribed proforma has been tabulated, which is hereto annexed and marked as Exhibit "D". The total amount of contribution @ 3%, as contemplated by the order of which compliance is hereby placed on record, from the entire State works out to Rs.4193,38,67,594.08/-.
6. The above approximate quantum of contribution is only on the basis of audit reports submitted by the respective trusts online and offline with the respective offices of the Assistant/Deputy Charity Commissioners situate throughout the State. The aforesaid expected contribution of the trusts has not been calculated by taking into consideration those trusts, who have either not audited their accounts and /or who have not submitted their audit reports despite having received the same from their respective auditors.
7. All the expenses incurred by the State Government, to keep the office of the Charity Commissioner operational, are to be paid by the Charity Commissioner from the P.T.A. Fund. Those expenses are to be incurred after the approval of the State Government. During the period of operation of the injunction order issued by this Hon'ble Court in the present group of matters, the State Government has granted funds to the Charity

Organization for payment of the salary, pension and for incurring the related allowances from 2010 to 2019, some amount towards the salary, pension and other allowances was reimbursed to the State Government as reflected by the chart that is hereto annexed and marked as Exhibit “E”. Presently, the amount to be reimbursed to the Government for the year 2020 to 2022 is to the tune of Rs.235,94,83,813/- towards salary, allowances, estimated pension etc.

8. The expenses incurred by the State to keep the office of the Charity Commissioner operational for rendering services as contemplated in the Act, right from the date the order of injunction is operative is Rs.492,27,79,308/-. The extract of that consolidated expenses is annexed as Exhibit “F”.
9. The State Government has accorded sanctions for the construction of regional offices as also for other proposals such as the computers’ hardware, annual maintenance etc. The total amount required for the said approved purposes, presently, is Rs.40,78,38,304/-. Out of which Rs.18,68,48,592/- is already paid. The remaining amount of Rs.22,09,89,712/- is to be paid from the P.T.A. Fund.
10. I say that infrastructural development of the Charity Commissioner offices across the State is the most essential expense. For the construction of regional offices and computer hardware, the maintenance-related estimate for the proposed expenditure is Rs.312,62,47,000/-. The details are as per extract Exhibit “G” (Table-A and Table-B).
11. Thus, the total amount immediately required for the reimbursement to the State Government and for the other expenses is Rs.570,67,20,525/-. Whereas, presently, the balance in the P.T.A. Fund, as on 21st June 2022, is Rs.43,18,98,809/-.

13) The learned Advocate General would submit that since substantial time has elapsed after filing of the present Petitions and particularly after passing of the interim order dated 25 September 2009, liberty deserves to be granted to the State Government to review the position relating to compulsory contributions from Trusts by taking into consideration the prevailing circumstances. We agree with the suggestion. The interim stay on contributions was granted in the wake of excess contributions already available with the Charity Commissioner. From the Motions filed by the Charity Commissioner, it appears that the balance in the fund has substantially eroded and the salaries and expenditure of the Charity Commission organization are required to be borne by the State Government. This situation cannot be continued forever.

14) There is no challenge to the provisions of Sections 57 and 58 of the MPT Act in the present Petitions. Thus, the source of power to levy contributions from the trusts is not questioned. The challenge mounted to the orders issued under Section 58 of the MPT Act had the genesis *inter alia* in the factual situation of availability of excess contributions in the Fund. The change in factual situation during pendency of the Petitions warrants review of the situation. The State cannot be restrained from exercising statutory powers of fixation rates of contribution in absence of challenge to the provisions of Sections 57 and 58 of the MPT the Act.

15) It thus appears that the interim order dated 25 September 2009 has resulted in a situation where no contributions are recovered from Public Trusts. However, this situation cannot continue forever. Section 58 of the MPT Act empowers the State Government to issue orders from time to time fixing the rate of contributions to be made by the Public Trusts to the Fund. The interim order dated 25 September 2009 was passed on account of the situation which existed at that time when excessive funds were available with the office of the Charity Commissioner. Since period of more than 16 years has passed since imposing of embargo on collection of contributions, in our view liberty needs to be given to the State Government to reassess the situation and make fresh order under Section 58(4) of the MPT Act, if and when necessary.

16) In view of the above discussion, we proceed to pass the following order:

- (i) The State Government and Charity Commissioner shall stand restrained from levying and/or collecting any contributions to the Fund based on the orders challenged in the Petitions or based on any previous orders.
- (ii) State Government shall however have the 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 levy of contributions from the Trusts to the Fund.

- (iii) Needless to observe that if Petitioners feel aggrieved by any such order(s) passed by the State Government, they shall be at liberty to challenge the same.

17) With the above directions, Public Interest Litigation and the Writ Petitions are **disposed** of.

18) Pending Applications and Notices of Motions stand disposed of.

[SANDEEP V. MARNE, J.]

[CHIEF JUSTICE]