

PETITIONER:
STATE OF GUJARAT

Vs.

RESPONDENT:
ACHARYA SHRI DEVENDRAPRASADJI

DATE OF JUDGMENT:
26/07/1968

BENCH:
GROVER, A.N.
BENCH:
GROVER, A.N.
SIKRI, S.M.
BACHAWAT, R.S.

CITATION:
1969 AIR 373 1969 SCR (1) 466

ACT:
Bombay Public Trusts Act (Bom. 29 of 1950), ss. 37, 67 and 69--"Statement" and "report"--Meaning of.

HEADNOTE:

Section 67 of the Bombay Public Trusts Act, 1950 provides that the contravention of an order or direction made under the Act by the Charity Commissioner is an offence. Section 69 relates to the duties, functions and powers of the Charity Commissioner. Under s. 69(H), the Charity Commissioner can, under s. 37, call for a "statement" or "report" from a trustee of a public trust.

The respondent was one of the trustees of a public trust. In respect of certain constructions made with the funds of the public trust, without the Charity Commissioner's permission, the Charity Commissioner wrote to the respondent asking him to furnish information regarding, the purpose of the constructions and when they were stated, the amount spent and to be spent, the income expected, and details and particulars regarding the contracts. For failure to comply with the notice, the respondent was prosecuted. He was convicted by the Magistrate under ss. 37 and 67 of the Act. In revision, he was acquitted by the High Court. In appeal to this Court,

HELD: The items mentioned by the Charity Commissioner only involve calling of "information" on various matters and did not fall within the meaning of the words "report" or "statement" used in s. 37(1)(c), and the Charity Commissioner is not empowered to call for such "information". [463 C]

From the context in which the word "report" has been used in s. 37(1)(c) the word can have reference only to a formal report which a trustee may be required to make under the provisions of the Act or the rules if any framed under s. 84(1)(b). Similarly, the word "Statement" has been employed in rr. 17, 22 and 23 of the rules, and this word, appearing in s. 37(1)(c) has to be construed with reference to them. So construed, it cannot be equated with the word "information" which would have a much wider sweep than the word "statement". The distinction between the words "statement" and "information" is recognised by the

Legislature itself by the use of the words "other information" in s. 56(N) (2) (h) of the Act and r. 18 of the Rules made thereunder, which take in the answering of all inquiries and giving all kinds of information. [462 E-G]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal. Appeal No. 150 of 1966.

Appeal from the judgment and order, dated June 21, 1965 of the Gujarat High Court in Criminal Appeal No. 906 of 1963.

H.R. Khanna and R.N. Sachthey, for the appellants.

1. M Nanavati, B. Datta and O.C. Mathur, for the respondent.

457

The Judgment of the Court was delivered by

Grover, J. This is an appeal by certificate against the judgment of the High Court of Gujarat setting aside an order of a Magistrate by which the respondent was convicted of an offence under s. 67 read with s. 37 of the Bombay Public Trusts Act 1950 (as adapted and applied to the State of Gujarat), hereinafter referred to as the Act, and sentenced to pay a fine of Rs. 300, in default of payment of which he was to suffer rigorous imprisonment for two months.

The respondent is one of the trustees of a trust known as "Shri Swami Narayan Mandir" at Ahmedabad which is registered as a public trust in the office of the Charity Commissioner. The trust is managed under a scheme prepared by the High Court of Bombay. It appears that the Charity Commissioner learnt about certain constructions having been made by the respondent trustee without permission from him. On March 22, 1962 a letter (Ext. 3) was addressed from his office to the respondent the material part of which may be reproduced:

"An information is received of the Charity Commissioner that opposite the temple near the New Narnarayan building the blocks are being constructed in which shops are constructed on the ground floor of that building.

1. For what purpose it is constructed ?
2. From when its construction work is started ?

3. What amount is spent till today in construction of the same ?

4. What amount is to be spent still ?

5. How much income will accrue from it ?

6. By which No. and on what date the permission of the Charity Commissioner is taken for constructing the same.

7. To which contractors are given the contracts for constructing the same ? His name, address, amount of the contract and other details and a copy of the contract.

8. If the committee has passed a resolution for constructing the same, its true copy.

9. If a contract is given to any contractor, then whether that contractor is related or acquainted to any member of the committee. All these necessary information may please be sent before 15th April, 1962.

Queries on similar lines were made regarding the

constructions near the respondent's bungalow in Girdharnagar.

458

As no reply was received from the respondent reminders were sent to him on April 20, 1962 and May 10, 1962 followed by a telegram dispatched on May 23, 1962. A reply was sent by the respondent giving the particulars of the buildings which had been constructed. Reference was made to the resolutions of the Committee relating to these constructions together with the amount spent on them.

The Inspector appointed under the Act made a report dated May 4, 1963 giving the result of the enquiry made by him relating to the aforesaid constructions. According to him 8 shops had been constructed adjoining the Narnarayan building opposite the Swammarayan temple, the estimated cost of which was more than Rs. 2 lacs. On plot No. 98A shops were being built in four blocks. Construction was also being made on another plot No. 98A-2 opposite the railway crossing. On May 30, 1962 the Charity Commissioner instituted a complaint in the court of the City Magistrate at Ahmedabad giving most of these facts and stating inter alia that under the provisions of the Act a trustee who desired to invest trust funds in construction of buildings was bound to obtain permission of the Charity Commissioner which had not been done in the present case. According to him the respondent had deliberately committed a breach of the relevant provisions of the Act and had omitted to comply with the notice dated May 22, 1962. The gravamen of the charge was contained in paragraph 7 according to which the respondent had, without reasonable cause, failed to comply with the order and the directions issued to him under the provisions of s. 37 of the Act.

The respondent filed an application (Ext. 6) before the Magistrate submitting that the investment of the trust funds made in the construction of the building adjacent to the Narnarayan Bhavan was legal and had been done in good faith. It was for the benefit of the institution. The scheme committee had given its consent by passing resolutions. By an order, dated June 10, 1963, the City Magistrate held that the respondent had not shown the purpose of the new constructions nor had he furnished the date of commencement of the work as also the details amount already spent and to be spent on the said constructions. He was accordingly convicted under s. 37 read with s. 67 of the Act. The respondent moved the High Court on the revisional side.

It was quite clear that the respondent was not being prosecuted for failure to obtain permission from the Charity Commissioner in the matter of investment of funds but the case for the prosecution, as urged by the Assistant Government Pleader before the High Court, was that in the letter dated March 22, 1962, Charity Commissioner had called for a "statement" or "report" regarding certain construction work which was being carried on

459

by the respondent in his capacity as a trustee and since the same had not been complied with the respondent had been rightly convicted. The High Court was of the view that the words used in cl. (c) of s. 37(1) namely, return, statement, account or report have to be interpreted or construed with reference to the other provisions of the Act and the Rules framed thereunder where those words had been employed or used. As regards the word "statement" reference was made to Rules 17, 22 and 23. Similarly the word "report" was mentioned in ss. 34, 37 and 38. It was finally held that

the Charity Commissioner had not called for any "statement" or "report" but for particulars and detailed information regarding the various items set out in his letter which he was not empowered to do.

The Act was enacted to regulate and to make better provisions for the administration of public, religious and charitable trusts in the State of Bombay. Section 2(13) defines s. public trust. Section 2(18) defines the word "trustee" as a person in whom either alone or in association with other persons, the trust property is vested and includes a manager. Section 2(20) says that words and expressions used but not defined in the Indian Trusts Act 1882 shall have the meanings assigned to them in that Act. Chapter II of the Act provides for the appointment of the Charity Commissioner, Joint Deputy and Assistant Charity Commissioners as also the subordinate officers and assessors. Chapter III gives charitable purposes and validity of certain trusts. Chapter IV relates to registration of public trusts. Under s. 17 a duty has been cast on the Deputy or Assistant Charity Commissioner in charge of the public trust registration office to keep and maintain such books, indices and other registers as may be prescribed which have to contain the prescribed particulars. Under s. 22 where any change occurs in any of the entries in the register kept under s. 17 the trustee shall, within 90 days from the date of the occurrence of such change, report the same in the prescribed form to the Deputy or Assistant Charity Commissioner in charge of the public trust registration office. Chapter V deals with accounts and audit. Section 32 makes it the duty of every trustee to keep regular accounts in the approved form containing the prescribed particulars. Under s. 34 it is the duty of every Auditor to prepare balance sheet and to report irregularities etc. Section 35 relates to investment of public trust money and provides inter alia that the Charity Commissioner may permit a trustee to invest money in any manner other than that provided in that section. Section 36 prohibits alienation of immovable property of a public trust without the previous sanction of the Charity Commissioner.

Chapter V/which contains ss. 37 to 41 is headed "control". Section 37 gives powers of inspection and supervision to the Charity Commissioner etc. These officers have been given, under subs. (1), the power

460

(a) "to enter on and inspect or cause to be entered on and inspected any property belonging to a public trust;

(b) to call for or inspect any extract from any proceedings of the trustees of any public trust and any books of account or documents in the possession, or under the control, of the trustees or any person on behalf of the trustees.

(c) to call for any return, statement, account or report which he may think fit from the trustees or any person connected with a public trust."

Sub-section (2) says that it shall be the duty of every trustee to afford all reasonable facilities to any officer exercising any of the powers under sub-s. (1) and to comply with any order or direction made by him. Sections 38 and 39 provide for calling of an explanation from the trustee or any other person concerned on the report of the Auditor and the making of a report by the Deputy or the Assistant Charity Commissioner to the Charity Commissioner about the

gross negligence, breach of trust etc., of the trustee. Under s. 40 the Charity Commissioner after considering the report submitted under s. 39 and giving an opportunity to the person concerned and holding such enquiry as he thinks fit can determine the various matters set out in that section and under s. 41 if he decides that any person is liable to pay to the public trust any amount for the loss caused to the trust he may direct that amount shall be surcharged on that person. Section 54 provides for what is called Dharmada and an account is to be submitted in the prescribed form. Section 56(N)(2)(h) includes among the general duties of a Committee in which the management of certain endowments vests under s. 56(D) to supply such returns, statistics, accounts and other information with respect to such endowments as the State Government may, from time to time, require. It is unnecessary to notice the other sections with the exception of ss. 67 and 69. Section 67 provides for contravention inter alia of any order or direction made under the Act by the Charity Commissioner. Section 69 relates to the duties, functions and powers of the Charity Commissioner. Under cl. (h) he can enter on and inspect any trust property and call for and inspect any proceedings of a trust. He can further call for any return, statement, books of account, document or report from trustees or any person connected with a public trust under s. 37.

The relevant rules in the Bombay Public Trust (Gujarat Rules 1961) may next be examined. Rule 17 is to the effect that every trustee shall keep regular accounts of all receipts and of movable and immovable property and of all encumbrances created on the trust property and of all payments, alienations etc. made on behalf

4 61

of the trust. The accounts have to contain all such particulars as in the opinion of the Charity Commissioner will facilitate preparation of the balance sheet and income and expenditure account in the Form of Schedules VII and IX and the preparation of a Statement of income chargeable to contributions in the Form of Schedule IXC. According to the proviso to r. 17 where the trustees of a public trust are entitled to file statements in the Form of Schedules IXA and IXB by virtue of any exemption granted under s. 33(4)(b) the accounts may contain particulars which shall facilitate the preparation of statements in the aforesaid Form of Schedules IXA and IXB. Schedule IXC is headed "statement of income liable to contributions" and has reference to sub r. (3) of r. 32 which provides for contributions to the Public Trust Administration Fund by every public trust other than a trust exclusively for the purpose of advancement and propagation of secular education or exclusively for the purpose of medical relief or veterinary treatment of animals; certain deductions specified therein shall be allowed in calculating the gross annual income of a public trust or where the public trust is a Dharmada, its gross annual collection by receipts for the purpose of assessing the contribution. Schedules IXA and IXB are headed "statements of income and expenditure" respectively and have as stated before reference to s. 33(4)(b) which provides that the Government may, by general or special order, exempt any public trust or class of public trusts from the provisions of sub-s. (2) of s. 33 according to which the accounts shall be audited annually in such manner as may be prescribed and by a person who is a Chartered Accountant or by such persons as may be authorised by the State Government. Rule 18 which relates to the powers in respect

of audit empowers the Deputy or the Assistant Charity Commissioner inter alia to require the production before the auditor of any book, deed, account etc. by the trustee or to give such information as may be necessary regarding the same. Rule 22 and 23 provide for inspection and grant of entries in the public trust register and other documents. Thus inspection and grant of copies can be obtained of any entry or portion thereof in the register of public trust or any statement, notice intimation, account, audit report or any other document filed under the Act.

In other similar legislation on public trusts the expressions which have been used may be noticed. In the (English) Charitable Trusts Act 1853 it was provided by s. 10 that the Board (consisting of the Charity Commissioners) may require all trustees or persons acting or having any concern in the management or administration of any charity or the estate, funds or property thereof to render to the said Board accounts and statements in writing in relation to such charity or the funds, estate, property, income or monies thereof or may also require such trustee to return answers in writing to any questions or enquiries

sup. C I/68-15

463

or statement" but in addition answers have to be returned to any questions or enquiries and the refusal to do so is punishable with contempt of court. In the Act itself the legislature was fully aware of the true import of the word "information" as is clear from s. 56(H)(2)(h) and r. 18. It is difficult, therefore, to equate the word "statement" as used in s. 37 (1) (c) with the word "information" or answering of enquiries etc. which would have a much wider sweep than the word "statement" when considered from the point of view of statutory provisions -and the rules in which it appears.

In view of the above discussion it is difficult to hold that any of the items mentioned in the letter, dated March 22, 1962 fall within the meaning of the words "report" or 'statement". The enquiries which have been made can only involve the calling of information on various matters mentioned in the letter which could hardly be said to fall within the aforesaid expressions used in s. 37(1)(c).

The view of the High Court, therefore, must be upheld, with the result that the appeal fails and is dismissed.
Y.P.

Appeal dismissed.

464