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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL *CIVIL JURISDICTION*

WRIT PETITION NO.890 OF 2017

National Centre for the Performing Arts
(NCPA) & Anr. ..Petitioners.
V/s.

The Joint Charity Commissioner & Ors. ..Respondents.

Mr.D.J.Khambata, Senior Advocate with Ms.Naira Jeejabhoy with Mr.H.D.Nanavati, Mr.H.N.Vakil & Ms.S.M.Vakil i/b. Mulla & Mulla and Cragie Blunt & Caroe for the Petitioners.

Mrs.Uma Palsuledesai, AGP for Respondent Nos.1 & 2-State.

CORAM: M.S. SONAK, J.

DATE : OCTOBER 10, 2017

ORAL JUDGMENT

Rule. At the request of learned counsel for the parties, rule is made returnable forthwith.

2. Heard Mrs.Naira Jejeebhoy for the Petitioner and Ms.Uma Palsuledesai, AGP for Respondent Nos.1 to 3 - State.

3. Challenge in this petition is to the order dated December 27, 2016 by which the Petitioner's Miscellaneous Application No.532/2016 seeking modification to the order dated June 20, 2015 came to be dismissed by the Joint Charity Commissioner.

4. The operative part of the Joint Charity Commissioner's order dated June 20, 2015 reads as follows:-

> "*Thus, I answer both the points are in the affirmative and proceed to pass the following order :-*
>
> *ORDER*
>
> *1) Application is allowed.*
>
> *2) Permission is granted to the applicant trust to sell and alienate trust property described in application at Exh.1 in favour of Ms.Smita G.Crishna, Ms.Freyan V.Crishna & Mrs. Nyrika V.Crishna respectively for Rs.372 crores by executing registered sale deed within the period of six months from passing of this order on the terms and conditions of draft indenture of conveyance which is annexed and marked as Exh.'L'.*
>
> *3) The Governing Council is hereby directed to deposit Rs.300 crores in any nationalized bank as defined in the Reserve Bank of India Act, 1934 or in any co-operative bank approved by the State Government and to utilize interest earned thereon for carrying out the objects of the trust.*
>
> *4) The applicant trust is hereby directed to deposit remaining Rs.72 crores in saving bank account of said trust to meet the immediate expenses and losses suffered by the trust.*

5) *Permission is granted subject to the provision or prohibition of any other Act for the time being in force.*"

5. By the Miscellaneous Application No.533/2016, the Petitioner trust had basically applied for the modification of clause (3) of the operative portion of the order dated June 20, 2015. The modification applied for was in order to permit the Petitioner trust to withdraw the amount of Rs.300 crores from the nationalized bank and to re-invest the said amount in permitted securities as specified by section 35 of the Maharashtra Public Trust Act, 1950 ('the Trust Act').

6. By the impugned order dated December 27, 2016, however, the Joint Charity Commissioner has dismissed this application by holding that there is no justification for the request made. The Joint Charity Commissioner further observed that the mere fact that the trust could earn more interest cannot be said to be relevant or sufficient to protect the interest of the Petitioner trust, which is of paramount consideration in trust matters.

7. The Joint Charity Commissioner has observed that deposit in nationalized bank is more safe and more secure, than, investment in any permitted securities.

8. Ms. Jejeebhoy, learned counsel for the Petitioner submits that section 35 of the Trust Act specifically provides for investment of public trust's money in any scheduled bank as defined in the Reserve Bank of India Act, 1934 or any 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. Since, the statute itself permits a public trust to make such investment, it was not open to the Joint Charity Commissioner to decline the permission based upon his opinion, that deposits in nationalized bank are more safe and secure. Ms. Jejeebhoy also drew the attention of this Court to a circular dated October 12, 1978 stating that trustees should not be compelled to invest the trust funds in any one particular manner. The trust should be encouraged to invest the surplus funds in securities floated from time to time by the public sector undertakings of the State Government like the SICOM, CIDCO and MSEB, etc. on their debentures being declared on public securities under section 2(12)(d) of the Trust Act.

9. Ms.Palsuledesai, learned AGP submits that the impugned order has been made by the Joint Charity Commissioner keeping in mind the interest of the Petitioner trust. Learned AGP further submits that she is not in a position to state as to whether the circular dated October 12,

1978 upon which reliance was placed by Jeejaboi, is clearly emanating from the office of the Charity Commissioner and whether the same is in force, till date.

10. The Petitioner Trust in Miscellaneous Application No.533/2015 had applied for following substantive reliefs :-

(a) *Application be allowed*;

(b) The Judgment and order dated 20-6-2015 passed in Application No.70/2014 under section 36-1(a) of the Maharashtra public Trust Act, 1950 in the matter of National Centre for Performing Arts be modified to the extent that the Applicant Trust is permitted to invest the amount of Rs.300 crores in the afore mentioned permitted securities as permitted u/s.35 of the Maharashtra Public Trust Public Trust Act, 1950;

(c) For such other just and proper orders in the interest of Trust and Justice ;

(d) Cost of this Application be allowed."

11. Section 35 of the Maharashtra Public Trust Act, 1950 reads as follows :-

" *35.* ***Investment of public trust money***

(1) Where the trust property consists of money and cannot be applied immediately or at any early date to the purposes of the public trust the trustee shall be bound 3[notwithstanding any

direction contained in the instrument of the trust) 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] :

Provided *that such money may be invested in the first mortgage of immovable property situate in 4[any part of India] if the property is not leasehold for a term of years and the value of the property exceeds by one-half the mortgage money :*

Provided *further that 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.*

(2) Nothing in sub-section (1) shall affect any investment or deposit already made before the coming into force of the Bombay Public Trusts (Amendment) Act, 1954, in accordance with a direction contained in the instrument of the trust:

Provided *that any interest or dividend received or accruing from such investment or deposit on or after the coming into force of the said Act or any sum [so invested or deposited] on the maturity of the said investment or deposit shall be applied or invested in the manner prescribed in sub-*

section (1)]."

12. As observed by the Joint Charity Commissioner in the impugned order, no doubt, interest of the trust is of paramount consideration. However, that does not mean that trust have to be restrained from making investment in terms of what is permitted by section 35 of the Trust Act. The legislative policy in this case is reflected in section 35 of the Trust Act which provides that where the trust property consists of money that cannot be applied immediately or at any early date to the purposes of the public trust, the trustees shall be bound, notwithstanding any direction contained in the instrument of the trust, 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.

13. The expression "*public securities*" is defined under section 2(12) of the Trust Act to mean as follows :-

"*2(12) "public securities" means—*

(a) securities of the Central Government or any State

Governments;

(b) stocks, debentures or shares in Railway or other companies, the interest or dividend on which has been guaranteed by the Central or any State Government;

(c) debentures or other securities for money issued by or on behalf of any local authority in exercise of the powers conferred by an Act of the Central or State Legislature;

(d) a security expressly authorised by an order which the State Government makes in this behalf . "

14. In this case, although this Court was *prima facie* satisfied that the impugned order warrants interference, the Petitioner Trust was directed to indicate the manner in which the amount of Rs.300 crores was proposed to be invested at-least in first instance.

15. In pursuance to the said direction Mr. Khushroo Nariman Suntook, Chairman of the Petitioner trust has filed an affidavit. Paragraphs 2 and 3 of his affidavit are relevant and the same reads as follows :-

"(2) Accordingly, the Petitioners have decided to make the

initial re-investments as hereunder, till such time as circumstances require such investments to be varied depending upon the prevailing rates of interest and other relevant factors or till such time as the Petitioners require these funds or part thereof, for utilization towards fulling the Objects of the Trust ;

a) Rs.200 crores (approximately) in Fixed Deposits with HDFC Ltd.
b) Rs.100 crores (approximately) in 8% GOI Savings Taxable Bonds.

3. a) Fixed deposits with HDFCA Ltd. are declared as "Public Securities' , under section 2(12) (d) of the Bombay public Trusts Act, 1950. A certificate issued by HDFC Ltd. along with Order No.BPT/1989/2743(89)-VI dated 22nd July, 1986 issued by Law and Judiciary Department, Mantralaya, stating that HDFC Trust Deposits (i.e. Deposits made under the category of 'Ttusts') are declared as 'Public Securities', are hereto annexed and marked as ***Exhibit-1*** *and* ***Exhibit-2*** *respectively.*

b) The GOI Savings Taxable Bonds are eligible investments as 'public securities' under section 35 of the Trust Act read with the definition of 'public securities' in section 2(12) of the Trust Act."

16. From the aforesaid, it is clear that the Petitioner trust seeks to invest Rs.300 crores in HDFC Limited and 8% GOI Savings Taxable Bonds. In the affidavit, it is stated that the fixed deposits with HDFC Limited are declared as public securities for the purpose of section 2(12) of the Trust Act. Necessary certificate in this regard has also been enclosed along with the affidavit. Similarly, 8% GOI Savings Taxable Bonds are also public securities under section 2(12) of the Trust Act. Further, the Petitioner trust in the affidavit has undertaken that they shall intimate the office of the Charity Commissioner, Mumbai annually of such further re-investments or variations thereto, till such time as monies are completely utilized for fulfilling the objectives of the trust. In this case, since investments are proposed to be made in terms of section 35 of the Trust Act in *'public securities'* as defined under section 2(12) of the Trust Act, there is no necessity of adverting to the issue as to whether the circular dated October 12, 1978 is in force or not. Irrespective of whether such circular has been issued by the Charity Commissioner or not, the reliefs applied for by the Petitioner trust, can be

considered to the extent indicated.

17. In these proceedings, there is no necessity to go into the issue as to whether the Petitioner Trust is repeatedly required to seek permission of the Joint Charity Commissioner whenever it proposes to make investment in terms of section 35 of the Trust Act. However, based upon the materials placed on record by the Petitioner, the Petitioners are certainly entitled to modification of the order dated June 2, 2016 so as to permit the Petitioner trust to make investment in terms of section 35 of the Trust Act, in the first instance with HDFC Limited and 8% GOI Savings Taxable Bonds. The request on behalf of the Petitioner trust is both reasonable and in consonance with the general scheme of section 35 of the Trust Act. In these circumstances, while appreciating the approach of the Joint Charity Commissioner in seeking to protect the interest of the Petitioner trust, the impugned order warrants interference.

18. Accordingly, the impugned order is set aside. Instead, the Petitioner trust is granted leave to withdraw the amount of Rs.300 crores already invested in the nationalized bank in pursuance of the

order dated June 20, 2015 and thereafter to invest forthwith, an amount of Rs.200 crores (approximately) in HDFC Limited and Rs.100 crores (approximately) in 8% GOI Savings Taxable Bonds in the first instance. As noted earlier, both these investments answer definition of the expression '*public securities*' under section 2(12) of the Trust Act.

19. The Miscellaneous Application No.533/2016 made by the Petitioner trust is, therefore, liable to be allowed and is hereby allowed to the aforesaid extent.

20. Rule is made absolute to the aforesaid extent. There shall not no order as to costs.

All concerned to act upon an authenticated copy of this order.

(M.S. SONAK J.)