Awareness of Provisions, Regulations and Memorandum of Public Trusts in Jalgaon District: A Pilot Study

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Abstract — The purpose of this paper is to review the present scenario of NGOs or Trusts, whether they are properly following provisions of Income-tax Act, 1961, Public Trust Registration Act, 1950, the Maharashtra State Tax on Professions, Trades, Callings and Employments Act, 1975 (Profession Tax Act) and Memorandum of Association of NGOs or Trusts. NGOs or Trusts are privately established non-profit making organizations. They are playing vital role in the field of social service like undertaking of educational activities, running medical hospitals and arranging medical camps, sports and other social, cultural activities, which are beneficial for the society. The Trust or NGO has to function within the framework of provisions of the Memorandum of Association. Provisions of the Income-tax Act, 1961 like section 10(23C), 11, 12A, 35AC, 80G giving Trust various types of assistance in the form of exemptions and deductions from income of the Trusts and also to the Donors, who are giving donation shall be meticulously followed. The Maharashtra Public Trust Act, 1950 and the Societies Registration Act, 1860 are governing and monitoring the activities and administrative matters of the Trusts or NGOs. For smooth and better operation of the Trusts or NGOs it is necessary to follow and comply with the provisions of all these Acts.

Keywords — Trust, NGOs (Non-Governmental Organizations), MOA (Memorandum of Association), Income-tax Act, 1961, Permanent Account Number (PAN)

I. INTRODUCTION

NGOs or Trusts are privately established Non-Profit making organizations. They are playing vital role in the field of social service like undertaking of educational activities, running medical hospitals and arranging medical camps, sports and other social, cultural activities, which are beneficial for the society.

Functioning of the Trusts or NGOs is regulated mainly by the Memorandum of Association of Trust or NGO, The Maharashtra Public Trust Act, 1950, The Societies Registration Act, 1860 and Income-tax Act, 1961. Further, depending upon the nature and scope of activities, the other Acts like Profession-tax, Foreign Exchange Management Act and so on, also apply to such NGOs or Trusts.

According to J. Fleishman, there is need to reform the regulatory framework of Non Profit Organizations or trust so as to safeguard the interest of the society as these organization does not comply laws.

According to Rajesh Chakrabarti, the issues of corporate governance is serious in Indian corporate world. India has one of the best corporate governance laws but poor implementation together with socialistic policies of the pre-reform era has affected corporate governance. Concentrated ownership of shares, pyramiding and tunnelling of funds among group companies mark the Indian corporate landscape.

A. THE MEMORANDUM OF ASSOCIATION OF TRUST/NGO:

The Memorandum of Association is the charter of incorporation of Trust or NGO. It defines the scope of activities to be undertaken by the Trust. The Memorandum of Association mainly includes following information and important provisions of the Trusts or NGOs - 1) Name 2) Address, 3) Property 4) Objects 5) Board of Trustees, 6) Qualification/Disqualification of Trustees, 7) Number of Trustees 8) Appointment of Trustees 6) Provision regarding Meetings of the Board of Trustees and Annual General meetings, notice, quorum of meetings, 7) Provisions regarding duties of various trustees of the Trust, 8) Provisions regarding opening and operation of Bank accounts 9) Provision regarding maintenance of Accounts and Audit, 10) Provisions regarding Purchase/Sale of Immovable property, taking loan, etc. 11) Alteration clause 12) Provisions regarding Dissolution of Trust and other relevant provisions for operation of trust. The Trust has to function within the framework of the provisions of the Memorandum of Association. Any activity or administrative decision that goes beyond the provisions of the Memorandum of Association will be treated as ultra vires the Memorandum of Association.

B. THE SOCIETIES REGISTRATION ACT

The Societies Registration Act (S.R.A.), 1860 is an Act of the Central Government under which the non-profit organizations and NGOs are registered. In India almost all the states have adopted this legislation, of course with the required changes, consistent with local conditions, for establishing the regulatory framework especially for the purpose of registration of such non-profit entities.

As per the Act any seven persons subscribing to the memorandum of association are eligible to register a society. The MOA must incorporate name of

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the society to be registered, the objectives for which it is established, names and addresses with occupations of the subscribers to the Memorandum of Association[7].

C. MAHARASHTRA PUBLIC TRUSTS ACT, 1950
(EIRSTWHILE BOMBAY PUBLIC TRUST ACT, 1950 - APPLICABLE IN MAHARASHTRA STATE) –

Public Trusts are playing a vital role in the field of social, educational, human rights, sports and awareness of health in urban as well as rural area of India. In every state there exists its own state law for formation of Public Trust. In Maharashtra there is Maharashtra Public Trust Act, 1950. In Maharashtra near about all the non-governmental schools are run by trusts, out of which the schools which are run with the State Board syllabus are enjoying financial assistance in the form of grant from the Government of Maharashtra. Rotary Clubs, Remand Home, Red Cross Society, Old Age Homes, associations of Doctors, Advocates, etc. the best example of Public Trusts.

For formation of a trust minimum two trustees are required. Generally by preparing Trust Deed or Memorandum of Association and Rules and regulations the Trust is formed. A very simple procedure for registration has been prescribed[4].


Section 8 of the Companies Act, 2013 permits the Central Govt. to direct the Registrar of Companies to get an NGO registered as a Company with limited liability without requiring the same to append the word “Limited” or “Private Limited”, depending upon constitution, to its name. For this purpose, however, the following conditions are to be satisfied –

1. The Central Govt. must be satisfied that the NGO applying for registration is being formed for promotion of Commerce, Arts, Science, religion, charity or such other useful objective.

2. The applicant NGO intends to utilize its surplus or other income to promote the proposed objectives; and

3. The applicant NGO intends to prohibit payment of dividend to its members

Any persons or group of persons may run their Charitable, Educational or social activity by formation of Non-Profit organization[5].

E. THE INCOME-TAX ACT, 1961

This Act includes provisions for charging Income-tax on the income earned by various categories of the assessee and, trust is one of the types of the assessee. Therefore, income earned by a trust is also assessable under the provisions of Income-tax Act, 1961 as Association of Persons. However, since a trust is a non-profit organization, this Act has given various exemptions and deductions in respect of chargeability of income earned by certain categories of trust, subject to complying with certain conditions.

As per the provisions of Income-tax Act, 1961 it is necessary and obligatory for every Trust and NGO to:

1) Obtain Permanent Account Number (PAN). The Permanent Account Number is essential for every Trust or NGO. Now this number is essential for opening bank account of the trusts and NGOs. By obtaining permanent account number the Trust is able to file its Income-tax return every year.

2) Obtain Registration under section 12A of the Income-tax Act, 1961 : For the Trusts or NGOs, which are not working especially for Education or Medical objects, it is necessary to obtain registration under section 12A of the Act from the Commissioner of Income-tax (Exemptions) of the area, when their gross receipts are above Rs.50000/-. Even now a days for the Trusts or NGOs having especially Educational and Medical objects, it is also necessary to obtain registration under section 12A of the Income-tax Act, 1961 for obtaining registration under section 10(23C)(v/vi) and/or 35AC and/or under Section 80G of the Income-tax Act, 1961.

3) To obtain registration under section 80G/35AC of the Income-tax Act, 1961 : For collecting donations from the general public it is necessary to obtain registration u/s 80G and/or 35AC of the Income-tax Act, 1961

4) To file Income-tax return : A Trust is required to file return of income as per the provisions of section 139(1) up to 30th September of every year[6].

II. DATA COLLECTION:

For the purpose of studying the compliances of the important aspects of the above Acts by the Trusts or NGOs, which are critical for the operation of the Trust or NGO, we have selected a sample of 200 trusts incorporated in Jalgaon District. The period of our study covers five years from 2008-09 to 2012-13.

Table showing results of data collection


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<th>Yes</th>
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<td>1</td>
<td>Accounts Completed</td>
<td>64</td>
<td>136</td>
</tr>
<tr>
<td>2</td>
<td>Audit Report submitted</td>
<td>58</td>
<td>142</td>
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<td>3</td>
<td>Budget submitted</td>
<td>52</td>
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<td>4</td>
<td>Election as per MOA</td>
<td>65</td>
<td>135</td>
</tr>
<tr>
<td>5</td>
<td>Change Report submitted</td>
<td>60</td>
<td>140</td>
</tr>
<tr>
<td>6</td>
<td>Property Report submitted</td>
<td>33</td>
<td>167</td>
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In respect of the matter of compliances with the provisions of the Maharashtra Public Trust Act by the 200 selected trusts, we have made the following observations

1) Only 64 i.e. 32% of the Public Trust have regularly written their books of accounts during the period under study. A very large majority of 136 i.e.
68% of the Public Trust have not regularly maintained the books of accounts, this is alarming situation.

2) Only 58 i.e. 29% of the Trusts have regularly submitted their audit report with the Assistant Charity Commissioner office. Again a large majority of 142 i.e. 71% of the trusts have not submitted their audit report, this is alarming situation.

3) It is necessary for every trust to submit the Budget of next year with the Assistant Charity Commissioner Office. Here, only 52 i.e. 26% of the Trusts have regularly submitted their audit Budget every year with the Assistant Charity Commissioner office. Again a large majority of 148 i.e. 74% of the trusts have not submitted their annual Budget, this is alarming situation.

4) As per the provisions it is necessary for every trust to hold elections of the trustees as per the provisions of Memorandum of Association of the Trust. It is observed that only 65 i.e. 32.50% of the Trusts have regularly held elections as per the Memorandum of Association of the Trust and a large majority of 135 i.e. 67.5% of the trusts have not held elections as per the provisions of Memorandum of associations of the Trusts, this is alarming situation.

5) For every Trust it is necessary to file change report regarding admission, deletion of trustee, submit the change report for new Management elected, change in any provision of the Memorandum of association, etc. Only 60 i.e. 30% of the Trusts have regularly submitted their change report with the Assistant Charity Commissioner office. Again a very large majority of 140 i.e. 70% of the trusts have not submitted their change report, this is alarming situation.

6) Every trust has to submit change report for Purchase, Sale of Movable and Immovable property. Only 33 i.e. only 16.50% of the Trusts have regularly submitted their Property change report regularly with the Assistant Charity Commissioner office. Again a very large majority of 167 i.e. 84.50% of the trusts have not submitted their Property change report, this is very alarming situation.

Compliances under the provisions of Maharashtra Public Trust Act, 1950

B. Compliances of provisions of The Income-tax Act, 1961

<table>
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<td>5</td>
<td>Sec.80G Reg.</td>
<td>3</td>
<td>119</td>
<td>78</td>
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In respect of the matter of compliances with the provisions of the Income-tax Act by the 200 selected trusts, we have made the following observations

1) Permanent Account Number (PAN) is obligatory for every trust. Even now for opening of bank account it is necessary to obtain PAN. Only 24 i.e. 12% of the Trusts have taken their PAN and a large majority of 142 i.e. 71% of the Trusts have not obtained their PAN.

2) For claiming the deductions u/s 11 of the Income-tax Act, it is obligatory for the Trust whose gross receipts above Rs.50000/-, to obtain registration under section 12A of the Act from the Commissioner of Income-tax (Exemptions). Only 12 out of 24 eligible trust have taken registration under section 12A of the Income-tax Act, 1961. This is just 50% of the eligible Trust.

3) Only 7 i.e. 3.50% of the Trusts are filing regularly the Income-tax return. A very large majority of 193 i.e. 96.50% of the Public Trust have not regularly filing their Income-tax return, this shows gross negligence of the legal requirements.

4) Only 3 i.e. 1.50% of the Trusts have obtained recognition under section 80G of the Income-tax Act, 1961. A very large majority of 197 i.e. 98.50% of the Public Trust are not taking benefits of provisions of
section 80G of the Income-tax Act. This shows lack of knowledge of provisions of the Act.

C. Working as per Memorandum of Association of Trust

<table>
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</tr>
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<tr>
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<td>Working as per objects</td>
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<td>12</td>
</tr>
<tr>
<td>4</td>
<td>One man show</td>
<td>190</td>
<td>10</td>
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In respect of the matter of compliances with the provisions of the Memorandum of Association of the 200 selected trusts, we have made the following observations

1) It is appreciable to note that 197 i.e. 98.50% of the Trusts are maintaining the number of Trustees as per the provisions of Memorandum of Association of the Trusts and only 3 i.e. 1.50% of the Trusts are not maintaining the number of Trustees.

2) Only 60 i.e. 30% of the Trusts have been regularly taking Elections as per the provisions of Memorandum of Association of the Trust. A very large majority of 140 i.e. 70% of the Public Trust have not regularly taking elections of their Trusts.

3) It is appreciable to note that 188 i.e. 94% of the Trusts are expending the amounts on the objects of their trusts and only 12 i.e. 6% of the Trusts are not fully spending amount on the object of the Trusts.

4) It is shocking to note that 95% of the Trusts are under the virtual control of one or two or very few trustees and it can also be concluded that the other trustees are either passive or reluctant to take part in the actual functioning of the Trust.

III. CONCLUSION:

In case of matter of compliances by trusts of the provisions of the major Acts applicable to the trust, it is observed that majority of the trusts are not complying with the provisions of the controlling Acts. In respect of a few aspects, the non-compliance is so alarming that immediate action of the machinery governing the trusts is essential. Further, in the matter of observing the provisions of their own Memorandum of Association, the important aspects of elections and control through democratic principles are disregarded or violated. However, the provisions relating to maintaining the required number of trustees and functioning as per the Memorandum of Association have been followed by very large majority of the Trust. Even though majority of the trusts have maintained the required number of trustees on their board of trustees, many of the trustees are not looking after the activities of the Trusts, they seem to be either passive or reluctant to take part in the actual functioning of the Trust. As a result just one or two person from the board of trustees are virtually controlling the activities of the trust.

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