(2014) 12 KL CK 0159

In the High Court Of Kerala

Case No : W.A. No. 2236 of 2012

Alphonsa Hospital APPELLANT

Vs

State of Kerala RESPONDENT

Date of Decision : 11-12-2014

Acts Referred:

Kerala Building Tax Act, 1975 — Section 3, 3(1), 3(1)(b), 3(3)

Citation : (2014) 12 KL CK 0159

Hon'ble Judges : T.B. Radhakrishnan, J;C.T. Ravi Kumar, J;Babu Mathew P. Joseph, J

Bench : Full Bench

Advocate : Raju Joseph, Sr. Advocate, Bechu Kurian Thomas, Paul Jacob (P), Firoz K. Robin, J. Julian Xavier, P.M. Poulose, R. Ramadas, S.A. Saju, K.C. Kiran, Enoch David Simon Joel, R. Harishankar and T. Sivadasan, Advocates for the Appellant; T. Krishnan Unni, Sr. Advocate and Sebastian Champappilly, Spl. Government Pleader, Advocates for the Respondent

Judgement

T.B. Radhakrishnan, J.—This bunch of matters relates to claims for exemption under S. 3 of the Kerala Building Tax Act, 1975, hereinafter referred to as the "Act". The Government is the authority to decide on any question as to whether a building is eligible for exemption. Sub-section (3) of Section 3 of the Act provides that a decision of the Government to that effect shall be final and shall not be called in question in any Court of law. The dispute in these Writ Appeals and Writ Petitions are as to whether or not, the buildings concerned are used principally for charitable purpose. The impugned decisions of the Government, in so far as they are against the appellants and petitioners, relate to buildings which are hospitals. S. 3(1)(b) of the Act provides, inter alia, that nothing in the Act shall apply to buildings used principally for charitable purpose. Explanation I under that provision provides that the term ''charitable purpose'' in that sub-section includes "relief of the poor and free medical relief. The reference to the Full Bench was made while considering one of the Writ Appeals and two Writ Petitions which stood referred to the Division Bench. The issue then addressed was that there is conflict among the different judgments delivered by the Full Bench, Division Bench and single Judges on the scope of the concept of charity for the purpose of the term "charitable purpose" in S. 3(1)(b) of the Act and the Explanation thereto. The different judgments then referred to were State of Kerala v. St. Gregorious Medical Mission (1992 (1) KLT 230), Fr. Thomas Panjikkaran Vs. Chalakudy Municipality, , Sacred Heart Hospital Vs. Secretary to Government, , Medical Trust Hospital Vs. State of Kerala, , Unity Hospital Pvt. Ltd. Vs. State of Kerala and Others, , St. Sebastin''s Visitation Hospital Vs. State of Kerala, and Jubilee Mission Medical College and Research Institute Vs. Government of Kerala, .

2. Heard learned Senior Advocates Sri. T. Krishnan Unni and Sri. Raju Joseph and learned Advocates Sri. Bechu Kurian Thomas, Sri. R. Harishankar, Sri. J. Julian Xavier, Sri. P.M. Poulose and Sri. Saju S.A. We have also heard Dr. Sebastian Champappilly, the learned Special Government Pleader (Taxes).

3. While the thrust of the submissions on behalf of the appellants and the petitioners is that the conflict between the different Bench decisions and the correctness of the decision of the Full Bench in Unity Hospital Pvt. Ltd. Vs. State of Kerala and Others, may require to be addressed, as rightly pointed out by the learned Special Government Pleader, by now, the question relating to the interpretation of the terms "charitable" and "charitable purpose" in S. 3(1)(b) of the Act stands laid down as law by the Hon''ble Supreme Court of India in Sh Medical Centre Hospital Vs. State of Kerala and Others, . That judgment was delivered on 16.1.2014 in Civil Appeal No. 665 of 2014 arising from judgment and order dated 13.3.2009 of this High Court in W.A. No. 362 of 2007. The judgment of the High Court was upheld and the civil appeal was dismissed, also noticing that the High Court had decided the Writ Appeal following the judgment of this Court in Medical Trust Hospital Vs. State of Kerala, was decided holding that so long as the petitioner is a hospital run on chargeable basis, it is not entitled to exemption. An attempt to seek re-consideration of the ratio of Medical Trust Hospital (supra) was turned down also noticing another decision of the Division Bench which had taken the same view in W.A. No. 1747 of 2006. That Writ Appeal, namely, W.A. No. 1747 of 2006, was decided on 6th June, 2007 following Medical Trust Hospital (supra). Thereby, the appeal by Thirurangadi Muslim Orphanage Committee against the judgment in O.P. No. 24824 of 1999 was dismissed, it was held in that appellate judgment that the definition of ''charitable purpose'' as provided by the Explanation to Section 3(1)(b) of the Act is an inclusive one and that the said Explanation says that charitable purpose should include relief of the poor and free medical relief, it was laid down that a claim for exemption as a charitable institution should satisfy two more conditions; that is, it should cater to the needs of the poor people and also provide free medical relief.

4. In S.H. Medical Centre Hospital (supra), the Hon''ble Supreme Court noted the statutory provision in S. 3 relating to the manner in which ''charitable purpose'' is

defined and formulated two questions to decide the issue. They read as follows:

"i. whether the application of income derived from a building for charitable purpose is sufficient to hold that a building is used ''principally'' for ''charitable purpose'' as per Section 3(1)(b) of the Act in order to hold it exempt from paying building tax?

ii. whether the Kerala High Court has correctly interpreted the ''Explanation'' clause to Section 3(1) in the cases referred (supra) to hold that charitable purpose means solely ''relief of the poor and free medical relief?"

5. Dilating on the aforesaid two questions, the Apex Court concluded that the High Court was correct in holding that the application of income derived from a building for charitable purposes does not amount to the building being ''principally used'' for charitable purpose. To examine the meaning of ''charitable purpose'', the meaning given to me word ''charitable'' in Oxford English Dictionary was noticed as "of or relating to the assistance of those in need". But, it was held that such an interpretation cannot be accepted for the purposes of tax. It was also stated that if medical services were being offered free to a majority of the patients rather than a minority of patients, then the conclusion could have been reached that the buildings are principally used for charitable purposes. Resultantly, it was held that the High Court has correctly interpreted the ''Explanation'' clause to Section 3(1) of the Act to hold that ''charitable purpose'' means relief of the poor and free medical relief, it was conclusively held by the Apex Court that only the building utilized for providing free medical aid can be Said to be used principally for charitable purpose and it will go against the letter of the law to grant building tax exemption for all the buildings of the hospital irrespective of what it is used for simply on the ground that the overall object of me hospital is charity although it is being predominantly run on a chargeable basis.

6. In the light of the aforesaid precedent, namely, the judgment of the Hon''ble Supreme Court dated 16.1.2014 in Civil Appeal No. 665 of 2014, reported as Sh Medical Centre Hospital Vs. State of Kerala and Others, , the issues covered by me reference to the Full Bench stand answered by the law laid by me Hon''ble Supreme Court of India in the said precedent. The reference is answered accordingly.

7. Following the aforesaid, we have examined the substance of the individual contentions in the Writ Appeals and Writ Petitions. The claims of some of the appellants and petitioners for exemption of buildings which fall under me category of religious and educational purposes, have been granted by the Government. Therefore, the only issue that remains for consideration is regarding the claim for exemption for the hospitals. As already noted, sub-section (2) of Section 3 of the Act confers the Government with the authority to decide any question as to whether a building falls under sub-section (1), to claim exemption. That decision of me Government shall be final and shall not be called

in question in any Court of law - See S. 3(3) of the Act. The scope of judicial review through writ jurisdiction in such matters has been succinctly stated by the Division Bench in the judgment dated 6th June, 2014 in W.A. No. 1747 of 2006 (Thirurangadi Muslim Orphanage Committee v. The Government of Kerala & Anr.), decided in relation to the same provision of law. Judicial review of an administrative action was found to be circumscribed by the need to observe the judicial discipline in terms of what was stated in Council of Civil Service Unions v. Minister for the Civil Service ((1985) 1 AC 374) wherein it was laid down that me grounds upon which administrative action is subject to control by judicial review can be classified into three heads, namely, illegality, irrationality and procedural impropriety, though other grounds of review do not get excluded and may be available depending on the facts of the case. A finding of fact cannot be upset except on a ground of lack of materials or gross insufficiency which would result in groundless reasoning, we see that there is considerable conflict in me approach adopted by the Government in the different cases. This may be because of the uncertainty that was noticed in the reference order regarding judicial opinion as reflected through the different decisions rendered on the issue, under such circumstances, we are of the view that ends of justice require that the orders of the Government which are impugned in the different Writ Appeals and different Writ Petitions need to be reconsidered by the Government to the extent they relate to hospitals. Those orders, to such extent, are liable to be quashed paving way for the Government to re-consider the individual cases in accordance with the law laid by the Hon''ble Supreme Court of India in Civil Appeal No. 665 of 2014 - Sh Medical Centre Hospital Vs. State of Kerala and Others, (supra) dilated upon herein above.

In the result, these Writ Appeals and Writ Petitions are ordered quashing the decisions of the Government impugned in all these proceedings to the extent they relate to claim for exemption from the provisions of the Act for hospitals and buildings belonging to hospitals, and are against the interest of the appellants and petitioners. This will pave way for the Government to re-consider each case individually in the light of what is stated above. The judgments impugned in the Writ Appeals will stand vacated.

