
(1998) 07 KL CK 0015
In the High Court Of Kerala
Case No : O.P. No. 5991 of 1988-L

Father Thomas Panjikkaran	Vs	APPELLANT
Chalakudy Municipality and Another		RESPONDENT

Date of Decision : 02-07-1998

Acts Referred:

Kerala Municipalities Act, 1961 — Section 101

Citation : AIR 1999 Ker 41

Hon'ble Judges : P. Shanmugam, J

Bench : Single Bench

Advocate : Mathew Zachariah and Koshy George, for the Appellant;

Final Decision : Dismissed

Judgement

P. Shanmugam, J.—Petitioner seeks to quash Ext. P18 order of the Municipality rejecting their application for exemption from paying property tax.

2. Petitioner is the Director of a Hospital. According to him, this hospital is owned by a Trust called St. James Hospital Trust. The Municipality proposed to levy property tax of Rs. 268.55, 458.40 and 7.944/- respectively for the second half year of 1989-90, for the three buildings owned by the hospital trust, bearing door numbers 109A, 109B and 109C. Building No. 109A is used for installing Generator. Building No. 109B is used as garage to park hospital vehicles and building No. 109C is the hospital. These buildings were assessed to property tax for the year 1990-91 at Rs. 268.55, 458.40 and 7,944/- respectively. Ext. P16 sets out the arrears pending as on 23-1-96 amounts to Rs. 1,05,858.85. Petitioner has availed of several rounds of litigation, viz., revision and claim of exemption before Secretary, appeal before Municipal Council, appeal before Government, which all were decided against the petitioner. Two Original Petitions, O.P. 8162/91 and O.P.3348/96, were filed wherein this Court directed the disposal. Ultimately, the present impugned order came to be passed, as directed. The O.P. is against this order.

3. The hospital trust is constituted by a trust deed Ext. P1. The objects of which are as follows :

"(a) to provide General Medical Service to the public solely for Philanthropic purposes irrespective of caste, creed and community.

(b) to conduct, promote or cause to promote research and development activities in different branches of Medical and related sciences for the benefit of the public.

(c) to plan and execute activities designed to promote medical education and services by establishing and conducting educational courses, providing scholarships, establishing endowments, running hostels etc.

(d) to design, promote and implement health care programme in general for the benefit of the public especially for children and women."

Petitioner has also enclosed income and expenditure account for the year ended 31-3-1990. Under the heading "income" an amount of Rs. 16,90,259.81 is shown. Petitioner has also furnished a certificate from the Tahsildar Ext. P2 stating that the enquiry shows that the petitioner institution is a charitable and non-profit making organisation working in the field of health on non-sectarian basis without consideration of religion, caste or creed.

4. This Court by judgment in O.P. 8162/91 dated 21-3-1994 directed the Municipality to dispose of petitioner's appeal within a period of three months from the date of receipt of a copy of the judgment. Petitioner also filed another O.P. 3348/9.6 to set aside the earlier order and the Municipality was directed to consider the appeal and dispose of the same within a period of two months from the date of receipt of a copy of the judgment. This order now impugned is passed in pursuance of the directions contained in the judgment. According to the said order, petitioner is not spending any amount for charitable purposes and, therefore, they are not entitled to exemption from the payment of property tax.

5. Section 101(1)(d) of the Kerala Municipalities Act (old Act) provides for exemption from property tax and the relevant provisions are as follows :

"101. Exemption :-- (I) The following buildings and lands shall be exempt from the property tax :--

(d) lands and buildings or portions of lands and buildings exclusively occupied and used for public worship or by a society or body for a charitable purpose :

Provided that such society or body is supported wholly or in part by voluntary contributions and applies its profits, if any, or other income in promoting its objects and does not pay any dividend or bonus to its members."

The main ingredients of the said provision is that the land and buildings should be exclusively occupied by the society for a charitable purpose and its profits are applied for promoting its objects, viz., charitable purpose. The Explanation to the Section states that "Charitable purpose" includes relief to the poor, education and

medical relief but does not include a purpose which relates exclusively to religious teaching.

6. The main submission of the learned counsel for the petitioner is that this Society is intended exclusively for charitable purposes and they are providing medical relief to the poor, but incidentally they do service to other well-to-do people. In this context, he has referred three decisions which are as follows :

7. In *State of Kerala v. St. Gregorious Medical Mission* 1992 (1) KLT 230 where in a Division Bench of this Court was dealing with exemption under Building Tax Act. The Division Bench held that if the main purpose for which the building is used is for running hospital for the relief to of the sick and to achieve this laudable aim some income is generated from the patients admitted in the hospital who can afford to pay, so long as it is not for the purpose of earning any profit, the principal object remains to be a charitable purpose. The question whether the buildings are used principally for a charitable purpose or not has to be decided on the basis of the main object for which the hospital is conducted.

8. In *Nedumchalil Charitable Trust v. Municipal Commissioner* 1991 (2) KLT 180 a learned Judge of this Court held that the fact that rich persons are also benefited is not a ground to deny the benefit. The purpose for which the income has been spent will have to be ascertained and the accounts for all the relevant years have to be considered in detail. Further, whether the proviso to Section 101(1)(d) has been satisfied or not also will have to be considered. Whether the body is supported wholly or in part by voluntary contributions and applies its profits, if any, or other income in promoting its objects and does not pay any dividend or bonus to its members will also have to be considered.

9. In *P.C. Raja Ratnam Institution Vs. Municipal Corporation of Delhi and Others*, the Supreme Court on a similar provision in Delhi Municipal Corporation Act, 1957 held that the test of "charitable purpose" is satisfied by the proof of any of the three conditions, namely, relief to the poor, education, or medical relief. The fact that some fee is charged from the students is also not decisive inasmuch as the proviso indicates that the expenditure incurred in running the society may be supported either wholly or in part by voluntary contributions. Besides, the explanation is, in terms inclusive and not exhaustive.

10. The fact that petitioner institution is also providing service to well-to-do people and they are being charged cannot be taken to be a ground for rejecting the claim of exemption provided, if the petitioner is able to establish that the trust hospital is intended for providing medical relief to the poor and needy though not exclusively. In this case, as rightly pointed out in the impugned order, there is no material whatsoever furnished by the petitioner to come to the conclusion that the institution is providing medical relief to the poor. From the statement of income and expenditure, it could be seen that the total income from pharmacy collection, I.P. collection. Lab collection, consultation fee, income from operation, X-ray collection, advertisement charge received, income from minor

surgery, ECG collection, interest, agricultural income and miscellaneous comes to nearly Rs. 16 lakhs. Therefore, it is not possible to find out from their statement of account, the quantification of the free service that is offered to the poor. If the last item of the income, viz., excess expenditure over income i.e. Rs. 78,876.51 could be taken as the amount spent for medical relief to the poor, then it has to be stated that compared to the income generated by collecting fee, this is negligible. The excess expenditure need not necessarily mean that it was only for charity. There is no evidence in support of such contention. The object of the trust is also not to provide medical relief exclusively to the poor. This is one among the four objects of the trust i.e. to provide general medical service to the public solely for philanthropic purposes irrespective of caste, creed and community. There are other activities also. Probably that may be the reason why the income and expenditure do not reflect actual expenditure incurred for the purpose of providing medical relief to the poor. On the other hand, it only shows the activities of the hospital as a commercial venture since the major item of income is generated out of collections from the public. In the decision referred above *Nedumchalil Charitable Trust v. Municipal Commissioner* 1991 (2) KLT 180 the learned Judge has found that the purpose for which the income has been spent will have to be ascertained and the accounts for all the relevant years have to be considered in detail. When the trust deed provided for medical relief to the poor, it should have been reflected in the balance sheet. Petitioner was given sufficient opportunity before the respondent Municipality to establish whether the building is used exclusively, or at least a major portion of the amount is spent, for charitable purpose. In my view, the petitioner has miserably failed to establish that a sizeable amount has been spent towards medical relief to the poor. The burden is on the petitioner to establish before the respondents about the nature of income and expenditure. Apart from furnishing the Tahsildar's report and the Income Tax Department's certificate, no tangible evidence in support of the case of the petitioner has been furnished. In my view, the Tahsildar's Certificate and the certificate given by the Income Tax Department are not relevant and they do not answer the question. Section 101 of the Kerala Municipalities Act empowers the Municipality to give exemption from building tax to charitable institutions. It is local body which has to sustain itself for the enormous expenditure involving various activities of the Municipality. If the petitioner is given the infrastructure facilities provided by the Municipality, they have to come strictly within the parameters set out by the exemption clause.

11. In *Carmel Book Stall v. Deputy Commissioner* 1994 KLJ 522 : AIR 1994 SCW 4560 the Supreme Court while dealing with the claim of exemption under Sales Tax Act held that it is the assessee to prove as a fact that profits are used for charitable purpose. Here the building must be exclusively used for charitable purpose and it applies its profits or income in promoting its objects. In the absence of any proof or records that the income is used for charitable purpose the petitioner is not entitled for the exemption.

12. Even though 10 years passed by since the date of the first assessment,

petitioner is not in a position to establish with facts and figures that they are actually providing free medical relief to the poor and their predominant purpose is charity. No substantial evidence is forthcoming to establish the case of the petitioner. On the contrary, the balance sheet for the relevant year belie their stand. For instance, the medicine purchase is for Rs. 8,01,415.42 and the collection is Rs. 9,10,674.95, a clear income of more than one lakh on this item alone. A look at the various items of income and expenditure (Ext. P3) shows that the petitioner is generating sufficient income for their expenditure. Petitioner trust is thus not supported by voluntary contributions. None of the objects in the trust deed provides that expenses can be incurred for running Chapel from the funds. The income collected from I.P. collection is Rs. 2,30,424/- where the hospital bed expenses is only Rs. 96,055.73. This should include the free service provided to patients who cannot afford the expenses. There is clear income of nearly Rs. 1,40,000/- under this head. The trust may be providing medical relief to the poor, but they do not satisfy the criteria laid down for claiming total exemption from building tax.

13. An argument has been advanced by the learned counsel that it is Secretary who has passed the order. In the preamble portion of the order, it could be seen that the matter was heard by the Taxation and Finance Committee and it was decided by them. Therefore, it is not correct to say that this is a decision of the Secretary alone.

For all these reasons, I do not find any grounds warranting interference with the order. Accordingly, original petition fails and it is dismissed.