
(2003) 12 KL CK 0010
In the High Court Of Kerala
Case No : W.A. No. 1518 of 1998

Fr. Thomas Panjikkaran

APPELLANT

Vs

Chalakydy Municipality

RESPONDENT

Date of Decision : 12-12-2003

Acts Referred:

Kerala Municipalities Act, 1960 — Section 101(1)

Citation : AIR 2004 Ker 160 : (2004) 2 ILR (Ker) 195 : (2004) 1 KLT 557

Hon'ble Judges : K. Thankappan, J;J.B. Koshy, J

Bench : Division Bench

Advocate : Mathew Zachariah, for the Appellant; P. Santhalingam and K.G. Bhaskaran, Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

J.B. Koshy, J.—Petitioner is the Director of St. James Hospital Trust which is registered as a charitable trust under the India Trust Act with Register No. 647/IV/88. Ext.P1 is the registered trust deed. The Tahsildar, Mukundapuram after verification issued Ext.P2 certificate testifying that the above Trust 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. Ext.P3 balance sheet and income and expenditure account shows that it is not working in profit. In fact, it shows excess expenditure over income. The capital funds shows that the capital was issued by donation of Rs. 83,34,455/- and part of running expenses were also met by donations or loan obtained from the benefactors. The statement of accounts will reveal that the hospital was constructed with voluntary contributions from public and income generated was utilised for treatment to the poor and for making further construction and other developmental activities and was not diverted for any other purpose. No dividend or income distribution was made. Nature of the functioning of the hospital, as can be seen from the trust deed, is charitable. Income Tax authorities accepted it as a charitable institution and exempted the Trust from paying Income Tax as

can be seen from Ext.P15. However, the petitioner was assessed to property tax by the Municipality. During the relevant time, lands and buildings or portions of lands and buildings exclusively occupied and used for charitable purpose by a society or a body was exempted.

2. Section 101(1)(d) of the Kerala Municipalities Act as it existed during the relevant time reads as follows:

"101. Exemption:- (1) The following buildings and lands shall be exempt from the property tax:-

xx xx xx xx xx (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 accounts produced for various years would show that no dividends or bonus is paid to the members of the trust and the income is mainly generated by voluntary contributions apart from the income received while giving treatment and sale of medicines. But, the entire income received is used in promoting its objects. However, the Municipality has passed an order denying exemption to the petitioner. The above order was finally upheld by the Government by Ext.P18 order in revision. This is challenged before this Court. According to the Government as well as the Municipality, amounts are collected from the patients for treatment and that amount is not used for charitable purpose; but, it is used for developmental activities and, therefore, petitioner is not entitled to exemption. The learned Single Judge found that the total income from Pharmacy collection, I.P. collection, Lab collection, consultation fee, income from operation, X-ray collection, income from minor surgery, ECG collection etc. comes to Rs. 16 lakhs. It is also stated that there is excess expenditure over income and it will not show that it was spent for the poor. One of the four objectives of the Trust (main object) is to provide general medical service to the public solely for philanthropic purposes irrespective of caste, creed or community. According to the learned Single Judge, since the amounts were collected and part of the same is used in the developmental activities, it is not a charitable institution. According to the appellant, the above conclusion is perverse and opposed to the decisions of this Court and Hon"ble Supreme Court on the undisputed facts of this case. The learned Single Judge also found that for the relevant year amount spent for purchase of medicine is more than Rs. Eight lakhs and collection from the sale of medicine is more than Rs. Nine lakhs and a profit of Rs. One lakh is earned by the trust. But, such profits alongwith donations and loans received from the benefactors are also used for fulfilling the charitable project. The amount of collection from sale of medicine also includes the sale of medicine in stock on the beginning of the accounting year. But, no profit is earned by the Trust.

3. Charitable institutions when doing service may collect fees from certain people and often that will be used and balance will be used for doing charitable treatment to the poor or treatment to the poor at a reduced rate or for further developmental activities. Wording in the section also shows that merely because profit is earned, an institution will not cease to be a charitable institution; but, profits earned shall be used in promoting its objects and it should not be used for paying dividend or bonus. The accounts will show that the Trust is being run mainly by voluntary contributions and there is expenditure over income received by contributions and fee collected. Admittedly, no dividend or bonus is taken and no amount was taken as profit and whatever is collected is used for achieving the objects of the Trust. In this connection, we refer to the decision of a Division Bench of this Court in *State of Kerala v. St. Gregorious Medical Mission* 1992 (1) KLT 230 wherein it was held that merely because the amount is collected from the patients a charitable hospital cannot be deemed to be an institution making profit. Various decisions of the Supreme Court and the earlier decisions of this Court were considered by the Division Bench while rendering the above decision.

4. We also refer to the decision of the Supreme Court in *Director of Income Tax Vs. Bharat Diamond Bourse*, wherein the Supreme Court while considering the scope of Section 2(15) of the Income Tax Act held that an institution even though collecting service charges and using the same to meet its expenses, since its predominant object is an object of general public interest, it is an institution established for charitable purposes. The Apex Court relied on its earlier Constitution Bench decision in *Additional Commissioner of Income Tax, Gujarat Vs. Surat Art Silk Cloth Manufacturers Association*, . We also refer to the decision of the Supreme Court in *Indian Red Cross Society Vs. New Delhi Municipal Committee and Others*, wherein a similar provision giving exemption to pay property tax was considered. It was held by the Apex Court that merely because some amount is collected and a portion is spent for developmental activities and only balance is spent for charitable purposes, it cannot be stated that the institution is a charitable institution so long as it is not giving any dividend or bonus to its employees. In *P.C. Raja Ratnam Institution Vs. Municipal Corporation of Delhi and Others*, also it is held that the fact that some fee is charged from the students is also not decisive as the section indicates that the expenditure incurred in running the society may be supported either wholly or in part by voluntary contributions. In this case, capital investment is completely made by voluntary donations and no bonus or dividend is paid. Developing the hospital, buying modern equipments for providing better treatment to the poor etc. are also ultimately for achieving the main charitable purposes of the Trust. There is expenditure over income. After holding enquiry, Tahsildar gave certificate that it is a charitable institution. Income Tax Department treated the appellant as a charitable institution. In the above circumstance, we are of the opinion that the institution is a charitable institution entitled to get exemption u/s 101(1)(d). It is submitted that at present this section is taken away and no such exemption is provided now. We are only considering Ext.P16 demand notice for the years

1989-90 to 1995-96. It was issued for the periods when the section quoted in paragraph 2 of this judgment was in force. Exts.P16 and orders leading to Ext.P18 are set aside with consequential reliefs.

The Writ Appeal is allowed.