

(2012) 07 KAR CK 0004

In the Karnataka High Court

Case No : Writ Petition No. 37956 of 2011 (LB-BMP/TAX) and Writ Petition No's. 37957, 37960 and 37961 of 2011

Gokula Education Foundation (Medical), Bangalore and
Another

APPELLANT

Vs

Bruhath Bangalore Mahanagara Palike, Bangalore and Others

RESPONDENT

Date of Decision : 02-07-2012

Acts Referred:

Karnataka Municipal Corporations Act, 1976 — Section 110 (1) (e), 110 (1) (i) (a),
110 (1) (i) (b)

Citation : (2012) 5 KarLJ 429

Hon'ble Judges : Ashok B. Hinchigeri, J

Bench : Single Bench

Advocate : Madhusudan R. Naik, for Sri Reuben Jacob and Sri A.V. Nishanth, for the Appellant; K.N. Puttegowda, for the Respondent

Final Decision : Allowed

Judgement

Ashok B. Hinchigeri, J.—In all these petitions, the challenge is to the endorsement, dated 23-3-2011 (Annexure-A) turning down the petitioners' request for the exemption from the payment of property tax. Sri Madhusudan R. Naik, the learned Senior Counsel appearing for Sri Nishanth K.V. for the petitioner submits that the impugned endorsement is issued on the basis of a mechanical and non-speaking order of the Commissioner of the Bruhat Bangalore Mahanagara Palike ("B.B. M.P." for short). The B.B. M.P. authorities have considered the petitioners' case u/s 110(1)(e) of the Karnataka Municipal Corporations Act, 1976 ("the said Act" for short); on the other hand they ought to have considered the petitioners' request u/s 110(1)(i)(a) and 110(1)(i)(b) of the said Act. The learned Senior Counsel submits that the hospitals are being run only as a part of the teaching institutions. Imparting the medical education and treating the patients constitute a composite activity only.

2. Sri Naik attacks the impugned endorsement on the ground of the violation of

the principles of natural justice. He submits that if the petitioners were only to be given an opportunity of being heard in the matter, they would however convince the respondents of the petitioners' entitlement to the exemption sought. In support of his submission, he read out para 6 of this Court's decision in the case of Smt. Devatha Venkatalakshamma Rathnam Setty Charitable Trust, Bangalore Vs. The Commissioner, Corporation of the City of Bangalore and Another, which are as follows.-

6. One other question that requires to be considered is whether the petitioner was entitled for a personal hearing before passing the impugned order, as contended by the learned Counsel for the petitioner? No doubt, as contended by Sri Gowda, Section 110(b) of the Act does not contemplate giving of a personal hearing before rejecting the claim made for exemption from payment of property tax. But, in my view, having regard to the consequences that would flow from rejecting the claim for exemption from payment of property tax, it is necessary to afford a personal hearing to the person who has made a claim seeking exemption from payment of property tax in terms of Section 110(b) of the Act. If the exemption claimed is wrongly rejected, there cannot be any doubt that it would result in serious civil consequences fastening the liability on the person to pay property tax. Therefore, before rejection of the claim for exemption from payment of property tax is made, the person, who is likely to be affected, must be given an opportunity. In my view, the said opportunity cannot be considered as an effective opportunity unless the person, who is likely to be affected, is given a personal hearing. Therefore, as noticed by me earlier, I am of the view that before a claim made for exemption from payment of property tax is rejected, as required u/s 110(b) of the Act, a personal hearing should be afforded to a person who has made such claim.

3. He has also relied on this Court's decision in the case of Corporation of the City of Mangalore and Another Vs. Kasturba Medical College, Mangalore, read out by him are as follows.-

3. Before the Commissioner, certain documents were produced like college calendar, list of documents, particulars of room rent collected from the students, etc. No doubt, at the time of admission, certain amount is collected from each student seeking admission to the hostel which amount is refunded to him at the end of his tenure. The said amount, in the meantime, earns interest that goes to the management. Otherwise, there is no other aspect of profit making that is brought out in the material on record. Learned Counsel for the petitioners Sri K.V. Narasimhan urges that, the balance-sheet would give an overall picture of the management making profit from the running of the hostel. As said earlier, the particulars are available before the Commissioner as to what each student is charged by way of room rent, etc. It is nobody's case that the hostel is being run for profit. It is also not a free hostel. Therefore, while recovering from the students the cost of maintenance of the hostel, it is possible that during certain months there could be excess of amount collected from the students. The

question is whether that itself makes the hostel concerned as one being run for profit. If we look to the relevant provision, viz., sub-clause (a) of clause (i) of Section 110(1) of the Act, it is evident therefrom that it is the dominant purpose for which the hostel is being run, that is important for determining whether the building concerned comes under exemption class or not. It reads thus:

Section 110(1) The following buildings and lands shall be exempted from the property tax.-

(i) building or lands exclusively use for:-

(a) students hostels which are not established or conducted for profit.

4. It could be seen from the description of the building concerned as specified in Section 110(1)(i)(a) of the Act that emphasises the dominant purpose for which the hostel is established or conducted, viz., whether it is established or conducted for profit. If we examine the facts of this particular case on the basis of the material produced before the Commissioner, it is evident that, the hostel concerned is established for the benefit of the students studying in the respondent-institution, but not established or conducted for profit. If the hostel is thus not established or conducted for profit, then, the mere fact that during some months the amount collected from the inmates of the hostel exceeds the cost of maintenance, it does not matter. There could be some months in summer and in those months the students will not be there in the hostel, wherein there would not be any amount collected from the inmates of the hostel, and the hostel would be empty, and during those months obviously the management will be suffering loss looked at from the maintenance angle. I am only referring to this aspect to emphasise that the dominant purpose is to be looked into for the purpose of seeing as to whether or not building needs to be exempted u/s 110 of the Act. Looked at from this angle, impugned order of the learned District Judge does not call for interference.

4. Contending that the quasi-judicial authority has to duly apply its mind before taking a decision in the matter, he read out para 35 of the Apex Court judgment in the case of S.N. Chandrashekar and Another Vs. State of Karnataka and Others,

which is extracted hereinbelow:

35. In Hindustan Petroleum Corporation Ltd. Vs. Darius Shapur Chenai and Others, this Court referring to Cholan Roadways Limited Vs. G. Thirugnanasambandam,

14. Even a judicial review on facts in certain situations may be available. In Cholan Roadways Limited v. G. Thirugnanasambandam, this Court observed: (SCC p. 253, paras 34-35)

34.... It is now well-settled that a quasi-judicial authority must pose unto itself a correct question so as to arrive at a correct finding of fact. A wrong question

posed leads to a wrong answer. In this case, furthermore, the misdirection in law committed by the Industrial Tribunal was apparent insofar as it did not apply the principle of *res ipsa loquitur* which was relevant for the purpose of this case and, thus, failed to take into consideration a relevant factor and furthermore took into consideration an irrelevant fact not germane for determining the issue, namely, that the passengers of the bus were mandatorily required to be examined. The Industrial Tribunal further failed to apply the correct standard of proof in relation to a domestic enquiry, which is "preponderance of probability" and applied the standard of proof required for a criminal trial. A case for judicial review was, thus, clearly made out.

35. Errors of fact can also be a subject-matter of judicial review. (See *E. v. Secretary of State for the Home Department*, (2004) 2 WLR 1351) Reference in this connection may also be made to an interesting article by Paul P. Craig Q.C. titled "Judicial Review, Appeal and Factual Error" published in 2004 PL, 788.

5. The learned Senior Counsel sums up his argument submitting that the hospital is not an independent entity; it is not stand alone hospital.

6. Sri Puttegowda, the learned Counsel for the respondents submits that the tax exemption is rightly denied to the petitioners as their hospitals are not being run on charitable lines; they are taking the charges from the patients. As they are in the nature of commercial establishments, they are not entitled to the exemption from the payment of the property tax. He brings to my notice this Court's decision in the case of *Hindustan Aeronautics Ltd. Aerospace Division Vs. State of Karnataka, Department of Housing and Urban Development and The Joint Commissioner, and Society of Jesus, Mary and Joseph, Bangalore and Another Vs. Bangalore Mahanagar Palike and Others*,

7. The impugned endorsement refers to the Commissioner's order, dated 27-12-2010. On 27-12-2010, the Commissioner has only written "agreed" (note No. 169). The note No. 169 is not reflective of the consideration of the petitioners' application for the exemption. When the petitioners' case itself is that it is entitled to exemption u/s 110(1)(i)(a) and 110(1)(i)(b), the Commissioner and other officials have gone on a different premise altogether. They have proceeded on the footing that the buildings in question are being used for commercial purposes. Impliedly, their examining the petitioners' case is only u/s 110(1)(e) which was not even the case of the petitioners.

8. Further, as per this Court's order in the case of *Smt, Devatha*, personal hearing is also required to be afforded to the applicant for the exemption.

9. For all the aforesaid reasons, I allow these petitions by quashing the impugned endorsement. The first respondent or any other Authorised Officer of the B.B. M.P. shall re-consider the petitioners' representations at Annexures-M, N and P by affording opportunity of hearing to the petitioners. The petitioners shall appear before the respondent 1 or any other Authorised Officer on 17-7-2012 without waiting for any notice from the respondents.

10. The petitioners shall produce the documents in support of their claim for exemption. It is also open to the respondent 1 or any other Authorised Officer to call for additional information/documents from the petitioners. The same shall be furnished by the petitioners" side without any loss of time. The respondent 1 shall consider the petitioners" representations afresh and dispose them of within three months from today. It is made clear that no opinion whatsoever is expressed on the merits of the claims of the petitioners. No order as to costs.