(1991) 06 KL CK 0012

In the High Court Of Kerala

Case No : O. P. No. 5418 of 1987

Nedutnchalil Charitable Trust APPELLANT

Vs

The Municipal Commissioner and Others RESPONDENT

Date of Decision : 05-06-1991

Acts Referred:

Kerala Municipalities Act, 1960 — Section 101(1)(d)

Citation : (1991) 2 KLJ 280

Hon'ble Judges : K.A. Nayar, J

Bench : Single Bench

Advocate : George Varghese Kannamthanam, for the Appellant; V. M. Kurian and Govt. Pleader Smt. A. B. Molly, for the Respondent

Judgement

K.A. Nayar, J.—The Original Petition is to quash Exts. P3 and P5 orders passed by the 1st and 3rd respondents. Petitioner is running a hospital in a building situated in the heart of Muvattupuzha Town. Petitioner claims to be a charitable Trust formed by Ext. PI Trust Deed and by Exts. P2 and P3 settlements, the property in question also was settled in favour of the Trust. The Trust Deed, is dated 12th August, 1976. For the first time in the year 1978-79, petitioner Claimed exemption from property tax under S. 101 (1) (d) of the Kerala Municipalities Act. The claim was rejected by the Commissioner of Muvattupuzha Municipality by Ext. F5 order dated 22-3-1984 stating that the accounts produced showed that charges have been collected from patients including - room rent and treatment is not given free. It was, therefore, felt that the building, cannot be said to be used exclusively for a charitable purpose. It is also stated in Ext. P5 that out of the total collection of Rs. 4,28,646.10, a sum of Rs. 6,787.50 only is given for free treatment. It is also seen that a sum of Rs. 97,789/- is spent for salary which is inclusive of the expenditure for the trustees, and further that the income and expenditure statement does not show any receipt under donation or voluntary contributions from the public for charitable purpose. He, therefore, found that the proviso to S. 101(1) (d) of the Kerala Municipalities Act is not i satisfied for granting exemption. There is an appeal provided under the Kerala Municipalities Act and the Rules. But before availing the remedy by way of appeal, petitioner has to deposit the entire amount. That, of course, will not be a ground for not exhausting the statutory remedy, and the requirement of pre deposit will not be a ground to say that the alternative remedy is adequate or efficient. But the petitioner availed of another remedy under S. 45 of the Act. S. 45 (1) provides that: the Government may, by order in writing, suspend or cancel any resolution passed, order issued or licence or permission granted. Petitioner invoked the power under S. 45 for cancelling the order passed by the Commissioner. The Government passed Ext. P8 order by which the petition filed before the Government was dismissed. The Government found that the petitioner is a family trust run for the benefit of the members of the family and it is not a society registered under the Charitable Societies Act. The Hospital charges all patients however small the amount and hence it does not come under the definition "charitable purpose". Therefore, it was held that the hospital building is not eligible for any exemption from payment of property tax under S. 101 of the Kerala Municipalities A or. It is these orders, viz. Ext. P 5 order of the Commissioner of Muvattupuzha Municipality and Ext. P8 order of the Government that are being challenged in this petition.

2. Admittedly, the petitioner owns land and building and, normally., property tax will have to be imposed under S. 99 of the Kerala Municipalities Act Every building will have to be assessed together with its site and other adjacent premises occupied as an appurtenance thereto unless the owner of the building is a different person from the owner of such site or premises. S. 101 gives exemption to certain buildings and lands from property tax. Petitioner claims exemption under S. 191 (1) (d) which is extracted herein:

(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.

Explanation :- "Charitable purpose" includes relief of the poor, education and medical relief but does not include a purpose which relates exclusively to religious teaching.

Petitioner claims exemption under the above provision. According to the petitioner, the land and building are exclusively occupied and used by the body for a charitable purpose. The charitable purpose has been enumerated in Ext. PI trust deed, which is extracted below:

1) To establish, develop, maintain and run charitable hospitals, and nursing homes and convalescent homes. II) To establish, develop and run homes and institutions for destitute persons. III) To establish, develop, maintain and run educational institutions which exist solely for educational purposes and not for profit. IV) To offer financial aid to any of the institutions of the aforementioned

kind which are run by other charitable trusts or institutions. V) To award scholarships and financial aid to deserving students for their education. VI) To give free medical aid to sick persons who are poor and VII) To give appropriate financial help to people in penury.

As capital fund of the Trust, a sum of Rs. 1,000/- each was donated by the trustees. There is power to augment the trust fund by receiving further donation or by setting apart the'' income of the Trust as will be decided by the trustees to be appropriate in order to further one or another of the objects of the trust. The Board of Trustees, was given power to frame rules for the purpose of administration of the trust. The Board of trustees is also empowered to dispose of, in any manner, any of the properties or the Trust and to mike new investments in conformity with the objects of the Trust and also raise loans from any of the Trustees or other persons or any financial institutions on the security of the properties of the trust, the interest payable on such loans being not in excess of the existing rates charged by banks. Bat no action shall be Inconsistent with the objects of the trust. Further, on winding up of the activities of the trust, all assets are to be handed over to any other trust or institution or other trusts or institutions having similar or substantially similar objects. These, in short, are the provisions of the trust deed.

3. Of course, there is distinction between the objects of the trust and the power of the Trust. This is now well settled and, therefore, the objects of the trust should not be confused with the powers of the Trust. What is stated in S. 101 (1) (d) for exemption is that the land and building in order to rank for exemption, has to be exclusively occupied and used for charitable purposes. The explanation says that the charitable purpose will include relief of the poor, education and medical relief, but does not include a purpose which relates exclusively to religious teaching. The proviso to sub-section (1) (d) says that the society or body will be ranked for exemption only if the Society or body is supported wholly or partly by voluntary contributions and applies Us profit, ''if any, or other income in promoting its objects and does not pay any dividend or bonus to its members. Usually there will be a clause in the trust deed itself stating that the income from the trust fund, whenever derived, shall be applied solely for promotion of its objects set forth in the deed and no portion of the income or property shall be paid or transferred directly or indirectly, by '' way of dividend, bonus or by way of profit to persons who, at any time, are or have been members of the trust or to anyone or more of them or to any person claiming through anyone or more of them. In short, there must be a provision that the income of the trust will be used only for the advancement of the objects of the trust.

4. It is well established that medical relief does not mean free treatment or treatment at less than the ordinary price for all patients. A hospital may be established for a charitable purpose although, in order to provide itself with revenue apart from voluntary subscriptions, it may run special wards for patients who pay a full price. It is not necessary for charitable purpose that it should

provide something for nothing or for less than its cost or less than its ordinary price. The eleemosynary element is not essential. It was BO held in Re The Tribunal (7 1TR 415 (PC) and Commissioner of Income Tax, Bombay City Vs. Breach Candy Swimming Bath Trust, Bombay, A Division Bench of this Court, in the judgment produced by the petitioner as Est. P4, which is also a case of building tax, held that eleemosynary element is not essential for a charitable purpose or in regard to the working of the charitable institution, and that the mere fact that fees are being charged will not lead to the conclusion that the hospital is not a charitable institution. The words ''Charity'' and ''Charitable purpose'' must be construed in their legal or technical sense which is different from their popular meaning Charity is a word of art, of precise and technical meaning. But it is much easier to say that a certain case does not come within the doctrine of charity than to define the limits of the doctrine affirmatively. As observed in Williams v. IR (16 ITR Suppl. 41 (49) (HL) the cases in which the question of charity has come before the Courts are legion, and not all the decisions, even of the highest authority, are easy to reconcile. Poverty is not a necessary element in a charitable trust. A valid charitable trust may exist notwithstanding the fact that in its administration the benefit is not confined by the donor to the poor to the exclusion of the rich. A trust for the advancement of education is charitable though the education is not only for the poor. Therefore, the fact that rich'' persons are also benefitted is not a ground to deny the benefit. Further, a trust may charge more from the rich to finance the administration to run the trust. Only because the patients are charged, it cannot be stated that the trust is not charitable. It is stated in Ext. P5 that the total collection was Rs. 4, 28,646.10 out of which Rs. 66, 787.50 only was given for free treatment. If the other amount was spent for advancing the charitable object, the exemption cannot be denied. Similarly, if salary is paid to the employees of the hospital, charitable nature will not be denied. Therefore, the exemption has been denied to the petitioner without adverting to the relevant facts of the case. 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 S. 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. It may be that there is no provision in the trust deed restraining the trustees not to pay dividend to its members. In the absence of a specific provision, whether in fact the fund has been utilised for those purposes or not has to be examined. In order to enable an effective reconsideration of the matter, I feel it is better that the case is remitted to the first respondent.

In view of the-above, I quash Exts. P5 and P8 and direct the 1st respondent to consider the matter afresh.

The original petition is disposed.

