(1999) 02 KL CK 0042

In the High Court Of Kerala

Case No : O.P. No. 20395 of 1997-C

Principal, St. Thomas College — APPELLANT

Vs

State of Kerala and Another — RESPONDENT

Date of Decision : 02-02-1999

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Kerala Building Tax Act, 1975 — Section 3(1), 3(2), 3(3)

Citation : AIR 1999 Ker 343 : (1999) 2 ILR (Ker) 796

Hon'ble Judges : J.B. Koshy, J

Bench : Single Bench

Advocate : Kurian Joseph and Firoz K. Robin, for the Appellant; V.V. Asokan, Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

J.B. Koshy, J.—The petitioner constructed a building for educational purposes and claimed exemption u/s 3(1)(b) of the Kerala Building Tax Act, 1975, hereinafter referred to as the Act. Section 3 of the Act is as follows :--

"Exemptions -- (1) Nothing in this Act shall apply to -

(a) buildings owned by the Government of Kerala or the Government of India or any local authority; and

(b) buildings used principally for religious, charitable or educational purposes or as factory or workshops.

Explanation.-- For the purposes of this sub-section, "charitable purpose" includes relief of the poor and free medical relief.

(2) If any question arises as to whether a building falls under Sub-section (1) (or u/s 3A) it shall be referred to the Government, and the Government shall decide the question after giv-i ng the interested parties an opportunity to present their case.

(3) A decision of the Government under Sub-section (2) shall be final and shall not be called in question in any Court of law."

In view of Section 3(1)(b) a building used principally for educational purposes is exempt from tax. The matter was referred to the Government u/s 3(1)(2).

2. By Ext. P4 order, exemption was refused on the ground that [he "building in question is used for functioning a parallel college which is not recognised by the Government." The fact that building is used principally for educational pur- poses is not disputed. It is not stated in Section 3(1)(b) that only recognised educational institutions or regular colleges or schools should be exempted. Authorities cannot deny the exemption given by the Legislature by qualifying the words used in the section. It is not his function to add words to fill in what he thinks the gaps in the Act. He cannot usurp the function of the Legislature by adding the word ''recognised'' before the words ''educational purposes.'' The cardinal rule for the construction of Act of Parliament is that they should be constructed according to the intention expressed in the Act themselves. Words of the statute speak the intention of the Legislature. Intention of the Legislature is not to be speculated especially when the words are clear. (See Craies on statute law and Cross on Statutory Interpretation.). In the decision reported in Sr. Mariatta v. State of Kerala (1981 Ker 80) a similar question was considered by this Court, Section 72(1)(d) exempted property tax payable from buildings used for educational purposes. This Court held that user of the building is important and not recognition. In this connection, I also refer to the decision in Chakravarthy Hostel v. Municipal Commissioner 1995 (2) Ker 588. Since the buildings used principally for educational purposes are exempted, the petitioner is entitled to the benefit of exemption as admittedly, purpose for which the building is constructed and used is not in dispute that it is for educational purposes.

3. In para 9 of the counter-affidavit a new case is set up by the respondents. It states as follows :

"It is submitted that the object of the functioning of the parallel college is more or less profit motivated and cannot therefore he treated as a service. Therefore, the contention raised on the basis of the decisions are not sustainable in the case of the petitioner."

This is not a ground stated in Ext. P4 order. In, Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, , the Supreme Court held that when a statutory authority passes an order based on certain ground, it cannot be supplemented by new grounds by affidavits. Therefore, the plea cannot be relied as a ground for rejecting petitioner''s application. Apart from the above same section exempting workshops and factories which may earn profits. Even unaided but recognised schools also collect fees. Collec- tion of fees or profit motive is not mentioned in the section to exclude from the exemption granted u/s 3 (1) (b), that is, buildings used for educational purposes.

4. The learned Government Pleader submits that the decision of the Government cannot be challenged in a Court of law in view of Section 3 (3). It is well settled that this Court has got power under Article 226 or 227 of the Constitution of India lo interfere with such decisions on well accepted grounds notwithstanding such provisions. Power of judicial review is not taken away by such provisions. It only excludes the jurisdiction of the ordinary civil Courts. Otherwise, it will be an invasion of judicial powers infringing the powers of judicial review. While deciding the question whether the building is used for charitable or other purposes etc. as mentioned in Section 3(1) on a reference u/s (2) of the Act, Government is exercising a quasi-judicial func-tion like a Tribunal. It cannot take away the exemption granted by the Legislature by giving wrong interpretation and the decision can be subjected to judicial review even though because of the specific excluding provision, the aggrieved party cannot approach the civil Court.

5. In, Minerva Mills Ltd. and Others Vs. Union of India (UOI) and Others, a five-Judge Constitution Bench of the Supreme Court held as follows:

". . . . Our Constitution is founded on a nice balance of power among the three wings of the State, namely, the Executive, the Legislature and the Judiciary. It is the function of the Judges, nay their duty, to pronounce upon the validity of laws. If Courts are totally deprived of that power, the fundamental rights conferred upon the people will become a mere adornment because rights without remedies are as writ in water. A controlled Constitution will then become uncontrolled." (Para 21)

In, L. Chandra Kumar Vs. Union of India and others, the Supreme Court held as follows:

". . . .We, therefore, hold that the power of judicial review over legislative action vested in me High Court under Article 226 and in this Court under Article 32 of the Constitution is an integral and essential feature of the Constitution, constituting pan of its basic structure. Ordinarily, therefore, the power of High Court and the Supreme Court to test the constitutional validity of legislations can never be ousted or excluded." (Para 78)

"We also hold that the power vested in the High Court to exercise judicial superintendence over the decisions of all Courts and Tribunals within their respective jurisdictions is also part of the basic structure of the Constitution. This is because a situation where the High Courts are divested of all other judicial functions apart from that of constitutional interpretation, is equally to be avoided." (Para 79)

6. The contention raised by the learned Government Pleader that in view of the specific exclusion of jurisdiction of the Courts u/s 3 (3) or a judicial review u/s 226 or 227 of the Constitution on an order passed by the Government on a reference u/s 3(2) is not tenable. Since the building in question is used for educational purposes only, the petitioner is entitled to exemption under the Building Tax Act for the above building as provided u/s (1) (b).

7. Therefore, the original petition is allowed and Ext. is set aside and I hold that the petitioner''s building is entitled for exemption from building tax.

