(1992) 11 KL CK 0029

In the High Court Of Kerala

Case No : O.P. No. 9123 of 1988-J

Puthanpalli Jaram APPELLANT

Vs

The Kerala Wakf Board and Others RESPONDENT

Date of Decision : 13-11-1992

Acts Referred:
Waqf Act, 1954 — Section 3, 46

Citation : AIR 1993 Ker 224

Hon'ble Judges : P.K. Shamsuddin, J

Bench : Single Bench

Advocate : P.G.K. Warrier and M.A. Manhu, for the Appellant; P.K. Muhammed, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Shamsuddin, J.—Petitioner is the Secretary of Puthanpalli Jaram, Madrassa and Hospital Paripalana Committee. There is a famous Jaram in Perurnpadappu known as Puthanpalli Jaram where a saintly person is buried. The Jaram attracts large number of devotees and pilgrims throughout the year. The devotees make offerings in cash in the Bhandaram kept at the Jaram and the income so derived from this source is very large.

2. Section 46 of the Wakf Act provides that the Mutawalli of every wakf, the net annual income of which is not less than one thousand, rupees, shall pay annually, out of the net annual income derived by the wakf, such contribution, not exceeding six per cent of such annual income as may be prescribed, to the Board for the services rendered by such Board to the wakf, Explanation (1) lays down that "net annual income" shall mean gross income of the wakf from all sources, including nazars and offerings which do not amount to contributions to the corpus of the wakf, after deducting items mentioned therein. Proviso to that clause further provides that the interest on income, if any, accruing from such donation or offerings shall be taken into account in calculating the gross annual income. Second proviso to Explanation (1) states that items of receipts

mentioned under that proviso shall not be deemed to be income for the purpose of this section and Item (f) therein is donations in cash or kind or offerings made by the donors as contribution to the corpus of the wakf. Proviso to (f) states that interest on income, if any, occuring from such donations or offerings shall be taken into account in calculating the gross annual income. Item (g) under the second proviso is voluntary contributions received in cash or kind for a specific service to be performed by the wakf and expended on such service and accordingly that item also will not be deemed to be income for the purpose of Section 46.

3. Section 3(g) defines "net annual income" as meaning, the net annual income determined in accordance with the provisions of the Explanations to Sub-section (1) of Section 46. Thus all the income described therein except those items enumerated under Explanation (1) as exempted categories are liable to be included in determining the net annual income.

4. As pointed out earlier the devotees make offerings in the Jaram in cash and in assessing the contribution payable by the petitioner those offerings were also taken into account by the Board. That has been challenged in this Original Petition.

5. The Wakf (Kerala Amendment) Act, 1972 (Act 18 of 1972) was passed by the State Legislature introducing certain amendments to Section 3 of the Act. Section 2 of the Amendment Act reads as follows:

"In Section 3 of the Wakf Act, 1954 (Central Act 29 of 1954) hereinafter referred to as the Principal Act, in Clause (g) -

(a) in Sub-clause (i), the word "and" at the end shall be omitted;

(b) after Sub-clause (ii) and the proviso thereto, the following sub-clauses shall be inserted, namely :--

"(iii) income accruing to the wakf from pidiyari, kettuthengu and similar other voluntary contributions in kind or in cash;

(iv) grants received from the State Government for the purpose of institutions such as mosques, orphanages, madrassas, schools and colleges; and

(v) donations given by the public for the purpose of maintenance of orphanages or inmates thereof and madrassas and Arabic colleges".

The petitioner took the position that income received by way of offerings is not liable to be included in the net annual income for the purpose of determining the contribution. They contended that such offerings would come within Clause 3 of Section 2 of the Amendment Act as according to the petitioner offerings are nothing but voluntary contributions in cash.

6. The question to be considered in this Original Petition is whether such offerings can be treated as the other voluntary contributions in kind similar to

pidiyari and kettuthengu. The Wakf Board took the position that the offerings are not similar other contributions in kind or in cash mentioned as exempted categories in the Amendment Act.

7. 1 am unable to agree with the contention raised by learned counsel for petitioner that offerings can be treated as other voluntary contributions exempted under the Amendment Act. In my view offering cannot be considered as contribution. The N.B.S. Concise English Malayalam Dictionary gives the following meaning to the word offering":

(Verancular Matter Omitted)

The same dictionary gives the following meaning to the word ''contribution'':

(Verancular Matter Omitted)

In Chambers 20th Century Dictionary the meaning given to the word ''contribution'' is:

"the act of contributing; something contributed; a levy or charge imposed upon a number of persons; anything furnished to a common stock or done towards a common end; a written composition supplied to a periodical etc."

''Offering'' is defined in the same dictionary as :

"the act of making an offer; that which is offered; a gift; that which is offered on an altar (B); a sacrifice; (pi.) in Church of England, certain dues payable at Easter;".

Similarly in the Concise Oxford Dictionary the meaning given to the word ''offering'' is :

"present (victim, first fruits, prayer) to deity revered person etc. by way of sacrifice, give in worship or devotion hence offering means hold out in hand or tender in words or otherwise, for acceptance or refusal or consideration."

In the same dictionary the meaning given to the word ''contribution'' is :

"act of contributing, thing, help, literary work, contributed".

In the New Websters Dictionary the meaning given to the word "offering" is :

"the act of a person who offers; that which is offered, esp. a contribution of money to a church; a sacrificial gift dedicated to a deity".

In the same dictionary the meaning given to ''contribution'' is:

"the act of contributing; something contributed; story, an article contributed to a magazine; an impost or levy".

Comparison of meanings given in the dictionaries to the words offering and contribution would show these expressions convey different meanings.

8. Pidiyari, kettuthengu and similar other contributions that have been exempted cannot by any stretch be treated as offerings. In this connection it would be interesting to notice discussion in the Legislative Assembly in regard to the amendment. The statement of Education Minister who piloted the bill would give sufficient indications as to object and scope of amendment proposed.

(Vernacular Matter omitted)

On a reading to the statement it would be seen that there were madrassas and mosques which were run with the meagre income received from kettuthengu and pidiyarj and if such contributions are made liable to pay contributions to the Wakf Board it would result in heavy burden for institutions which run such madrassas and mosques. It may also be noticed that if there was intention to exclude the offerings it could have been specifically in included as an exempted item. In this context it would be profitable to refer to Section 46 of the Central Act which expressly exclude offerings made by the donors as contribution to the corpus of the Wakf. It is not contended by counsel for petitioner that offerings made in the instant case were as contribution to the corpus of the wakf.

9. The foregoing discussion make it clear that the offerings are not an item which has to be excluded in determining contribution pay-able to the Board by virtue of the Wakf (Kerala Amendment) Act 18 of 1972.

The Original Petition fails and is dismissed. Petition dismissed.

