
(1963) 10 MAD CK 0046

In the Madras High Court

Case No : Writ Petitions No's. 1393 of 1961 and 276 to 282 of 1963

S.B. Adityan and Others

APPELLANT

Vs

First Income Tax Officer, Madras.

RESPONDENT

Date of Decision : 04-10-1963

Acts Referred:

Constitution of India, 1950 — Article 226
Income Tax Act, 1922 — Section 34, 4(3)(i)
Income Tax Act, 1961 — Section 22(2)

Citation : (1964) ILR (Mad) 700 : (1964) 52 ITR 453

Hon'ble Judges : Jagadisan, J

Bench : Single Bench

Judgement

Jagadisan, J.—These are petitions under article 226 of the Constitution filed by the same petitioners in relation to the same subject-matter. In Writ Petition No. 1393 of 1961 the prayer is for the issue of a writ of certiorari to quash the order of the First Income Tax Officer, City Circle IV, dated November 6, 1961, in G.I. No. 301-T. In Writ Petitions Nos. 276, 278, 279 and 280 of 1963, the petitioners pray for the issue of a writ of prohibition to forbear the Income Tax Officer, Special Investigation "A" Circle, from proceeding with enquiries commenced u/s 34 of the Indian Income Tax Act in regard to the assessment years 1955-56, 1956-57, 1957-58 and 1958-59 respectively. In Writ Petitions Nos. 277, 281 and 282 of 1963, the petitioners pray for the issue of a writ of prohibition restraining the Income Tax Officer, Special Investigation "A" Circle, from proceeding with further enquiries in pursuance of notices issued u/s 22(2) of the Income Tax Act in relation to the assessment years 1961-62, 1959-60 and 1960-61 respectively. The facts are briefly as follow : Dina Thanthi is a daily newspaper in Tamil having a very wide circulation. It is a business which was started by one S.B. Adityan in the year 1942. He was the sole proprietor of this business of carrying on a daily newspaper. He constituted a trust called the Thanthi Trust under a registered instrument dated March 1, 1954. The petitioners style themselves as the trustees of this trust. The deed recites the purposes of the trust to be :

(a) to establish the Dina Thanthi on Daily Thanthi as an organ of educated public opinion for the Tamil reading public;

(b) to disseminate news and to ventilate opinion upon all matters of public interest through the said newspaper; and

(c) to maintain the said newspaper and its press in an efficient condition devoting the surplus income of the said newspaper and its press, after defraying all expenses, in improving and enlarging the said newspaper and its services and placing the same on a footing of permanency.

2. The founder of the trust, S.B. Adityan, appointed himself and two others, S.T. Adityan and B.R. Adityan, as the first batch of trustees to carry on and administer the trust. The trustees were empowered to appoint one of themselves as the director. He was empowered to borrow money on security or otherwise, to enter into contracts for the trust, to operate on the banking accounts of the Daily Thanthi, to give valid receipt for moneys payable or owing to the trust and to do such other things and perform such other acts as the trustees may from time to time generally or specially authorise him to do. S.B. Adityan was the first director so appointed. The trust deed also provides that if for any reason the Daily Thanthi were to become extinct or defunct by ceasing to carry on the newspaper business the property of the trust may at the discretion of the trustees be employed for any charitable purpose. The author of the trust, therefore, created a trust to carry on the business of conducting the daily newspaper in Tamil which he was previously carrying on as his own. The printing machinery, the printing types, furniture and accessories together with the goodwill of the business were all transferred to and vested in the trustees. The petitioners claim that the entire income derived from this trust and which, according to them, is applied only for purposes of the trust, is exempt from being assessed to Income Tax u/s 4(3)(i) of the Indian Income Tax Act. The bone of contention between the petitioners and the Income Tax Officer is, therefore, whether the exemption claimed is well-founded or not.

3. We must mention even at the outset that the petitioners have not been assessed to tax as yet in regard to any of the assessment years 1955-56 to 1961-62 negating their claim for exemption. It appears that in spite of the indefatigable efforts on the part of the petitioners to escape the clutches of the taxing authorities even without an investigation of the facts, the department has steadily abstained from adopting such an arbitrary course.

4. There has been a good deal of correspondence between the petitioners and the Income Tax department. On April 20, 1957, the First Additional Income Tax Officer, City Circle II, Madras, called upon the director to let him know if the income derived from the newspaper business was applied wholly for the purpose of the institution. By his letter dated April 25, 1957, the director asserted that the income was applied solely for purposes of the trust and claimed to have a declaration that the income was exempt from taxation u/s 4(3)(i) of the Act. The

officer then called for the trust accounts for three years ending 30th June, 1956, and also directed the production of the profit and loss statements and balance-sheets for the said period. This request was complied with on May 21, 1957. A few days thereafter, the director of the trust again pressed the Income Tax Officer to recognise the eligibility of the trust for exemption. This request was repeated by the trustee on November 7, 1957. The Income Tax Officer called for the first issue of the Dina Thanthi and for the subsequent editions of the daily issued on the occasion of anniversaries. The director filed two sets of photostat copies of the leading articles from the issue dated December 31, 1942, and from other anniversary issues. The first issue of the paper was on November 1, 1942, but the trustee averred that a copy of the that issue was not available. Then the Income Tax Officer called for a list of shares purchased in the name of S.B. Adityan or in the name of the Thanthi Trust for the years ended June 30, 1956, June 30, 1957, and June 30, 1958. This information was furnished. The petitioners were next called upon to furnish details of the income earned by the trust from year to year after its formation and how such income had been utilised. The petitioners state that the particulars called for were furnished. But it appears, however, that the trust did not furnish all the information called for by the Income Tax Officer. The trustees were claiming repeatedly and persistently that the income of the trust was exempt from taxation. Eventually the Income Tax Officer issued notices u/s 34 of the Act on February 23, 1960, in respect of the assessment years 1955-56, 1956-57, 1957-58 and 1958-59. The petitioners filed returns in respect of each year on April 26, 1960, July 21, 1960, August 18, 1960, and December 6, 1961. They also submitted their returns in respect of the years 1959-60, 1960-61 and 1961-62 on December 20, 1961, April 28, 1962, and May 24, 1962, respectively. It is needless to encumber this judgment with the details of the correspondence between the petitioners and the department. We may, however, point out that the petitioners in their letter dated December 20, 1961, pressed the Income Tax Officer to decide the question whether the Thanthi Trust was a trust of such description as would enable it to claim that its income would be exempt from tax u/s 4(3)(i) of the Act. In response to this request or demand, as we would like to call it, the Income Tax Officer wrote back on November 6, 1961, as follow :

"Sub : Decision on exemption claimed u/s 4(3)(i) of the Act. Your letter dated October 20, 1961.

The claim to have the income exempted u/s 4(3)(i) of the Act has been carefully considered by the Board; it is found that the real object of the trust is different from its declared object. Further, the income derived from the paper is not applied wholly for religious or charitable purposes as contemplated in the said section.

Having regard to these facts, the claim for exemption u/s 4(3)(i) of the Act is hereby refused.

Kindly, therefore, file the returns immediately."

5. It is this order which is challenged in the petition for the issue of a writ of certiorari.

6. It is quite plain that the Income Tax Officer passed the above order having regard to the opinion tendered by the Board which is the Central Board of Revenue, New Delhi. We directed the department to produce the letter of the Central Board to the Income Tax Officer. It has been placed before us. The letter of the Board is dated October 20, 1961, and it runs as follows :

"From

The Secretary, Central Board of Revenue.

To

The Commissioner of Income Tax, Madras.

Sir,

Sub :...

I am directed to refer to the correspondence resting with your letter C. No. 212(6)/57 dated 23rd August, 1961, on the above subject.

The matter has been carefully considered in the light of the reports furnished by you in this behalf. These reports as also the standing counsel's opinion show that the real object of the trust is different from its declared object and, secondly, the income derived from the paper is not applied wholly for religious or charitable purposes. Having regard to these facts, the Board is of the view that the claim for exemption should be refused."

7. It appears that the petitioners themselves addressed a letter on December 6, 1961, to the hon'ble Minister for Finance, Union Government. A copy of that letter has been produced by the petitioners and placed before us. In that letter the petitioners state as follows :

"It is a fundamental principle that the first thing to decide is whether the trust is exempt, then, if it is exempt it need not file returns.

But in our case for five years the department has kept the matter pending, and has asked us to go on filing returns. What is more, every time a new officer comes to our division he begins a new round of the same old matter which his predecessor had interrogated.

Our prayer therefore is :

(i) papers relating to the Thanthi Trust pending before Central Board of Revenue be immediately called, and (ii) urgent orders be passed exempting the Thanthi Trust from Income Tax under the said Act."

8. The significance of the reference to the old Act is that under the new Act the exemption has been completely taken away. It is difficult to understand under

what provision of the Indian Income Tax or any other enactment the petitioners approached the hon"ble Finance Minister to grant exemption from tax. But, we are not concerned with the attempts made by the petitioner to obtain the benefit of exemption, as the sole question now before us is whether writs can issue granting the reliefs prayed for.

9. We shall first take up the petition for the issue of a writ of certiorari. Without mincing matters we may straightaway say that the impugned order cannot stand. A worse specimen of a quasi-judicial order would be hard to find. Certiorari lies to quash the proceedings of a statutory authority which has erred in failing to conform to the statute. It of course tries to set aside an order of the authority which makes no secret of the fact that the order emanated from another quarter and was not the result of its deliberations. Extraneous influence in passing quasi-judicial orders vitiates them. If such a thing is manifest on the face of the record the court cannot stand idly by; its plain duty is to quash it. To listen to both sides fairly, to act in accordance with law and within the bounds of its jurisdiction and to reach an honest conclusion are the basic principles from which no judicial tribunal can depart. The intended purpose of writs is to direct observance of these principles in instances where they are overlooked or flouted.

10. The learned Advocate-General, appearing for the department, did not seek to support the order and quite frankly submitted that he was not anxious to sustain it in its present form at the present stage. He, however, very properly drew our attention to the fact that the petitioners themselves really invited the trouble and urged that the Income Tax Officer is not to be blamed. We have no doubt that the petitioner wanted to short-circuit the machinery of assessment and, therefore, approached the highest governmental quarters in New Delhi so that the Income Tax Officer can be overawed and forced to give a decision in their favour. We are not suggesting that the petitioner were guilty of any impropriety in the matter. They were not hopeful of making the Income Tax Officer see reason and to perceive the true legal position and, therefore, desired to have the matter dealt with at the highest level possible. This accounts for their correspondence with the Finance Minister or the Central Board of Revenue. However misguided an assessee may be, in his efforts to avoid tax, the Income Tax Officer should not become unsteady and get out of his moorings and succumb to the importunities of the assessee and give a decision prematurely, not warranted by the statute. We are not inclined to exonerate the Income Tax Officer wholly from muddle into which he got, because of a clever move on the part of the petitioners.

11. It is patent from the face of the order under challenge that the Income Tax Officer did not render any decision of his, but only voiced the view of the Central Board of Revenue. There was debate before us as to how far the Board can interfere with the course of assessment proceedings. The learned Advocate-General referred to the provisions of section 5, sub-section (7B) and section 5, sub-section (8). They read as follow :

"5. (7B) The Director of Inspection, the Commissioner or the Inspecting Assistant Commissioner as the case may be, may issue such instructions as he thinks fit for the guidance of any Income Tax Officer sub-ordinate to him in the matter of any assessment, and for the purposes of making any inquiry under this Act (which he is hereby empowered to do), the Director of Inspection, the Commissioner and the Inspecting Assistant Commissioner shall have all the powers that an Income Tax Officer has under this Act in relation to the making of inquiries.

5. (8) All officers and persons employed in the execution of this Act shall observe and follow the orders, instructions and directions of the Central Board of Revenue :

Provided that no such orders, instructions or directions shall be given so as to interfere with the discretion of the Appellate Assistant Commissioner in the exercise of his appellate functions."

12. The Central Board of Revenue which is constituted by the Central Board of Revenue Act, 1924 (IV of 1924), is at the apex of the hierarchy of executive authorities constituted under the Indian Income Tax Act. It has got powers of superintendence and control over the whole of the department. It has got powers to make rules and to issue orders, instructions and directions to all officers and persons employed in the execution of this Act. The Director of Inspection, which term includes the Additional Director, the Deputy Director and the Assistant Director of Inspection, is appointed by the Central Government and is subject to the control of the Central Board of Revenue. Section 5, sub-section (7B), in terms does not refer to the Central Board. It is not possible to equate the Director of Inspection to the Board as he is only a subordinate to the Board. Even the enumerated authorities mentioned in section 5, sub-section (7B), may only issue instructions for the guidance of Income Tax Officers in the matter of any assessment. They cannot get substituted for the Income Tax Officer and constitute themselves into the assessing authority. The nature of the jurisdiction contemplated u/s 5, sub-section (7B), is only of an advisory character. Whatever may be the true position of the Board, as the top-most administrative authority, it cannot, in our opinion, tell the assessing authority, the Income Tax Officer, what to do and what not to do in regard to a particular assessment. It would not follow from section 5, sub-section (8), that except the Appellate Assistant Commissioner the other authorities would be subject to the control of the Board in the matter of any assessment. The Board with all the plenitude of its power cannot direct any Income Tax Officer to tax "A" or not to tax "B". Such a power if assumed to exist in the Board would be calculated to deprive the assessing officer of his statutory function and would be against the grain of the judicial powers which the officer is supposed to exercise. If the Appellate Assistant Commissioner is not bound by the Boards orders, but the Income Tax Officer is so bound, does it mean that the appellate authority can sit in judgment over the Boards decision which the Income Tax Officer gave effect to? Surely that cannot

be the correct position.

13. In the present case it is not necessary to condemn the order of the Income Tax Officer dated November 6, 1961, on the ground of the Boards interference. In our judgment the order is bad because there is no provision of law enabling the Income Tax Officer to give any advance decision on a relief claimed by the assesseees as regards their assessment. The officer has not yet assessed the petitioners. The applicability or otherwise of the exemption u/s 4(3)(i) can be considered and decided only as part of the assessment itself. Any expression of opinion on the question preliminary to the assessment would be illegal and this would not be the less so, because the assesseees themselves forced a decision prematurely. We are, therefore, of opinion that the order of the Income Tax Officer dated November 6, 1961, is liable to be quashed.

14. Turning now to the writs of prohibition, the question is whether the petitioners have good grounds to prevent the Income Tax Officer from proceeding to levy the assessment either as a result of proceedings commenced u/s 34 of the Act or otherwise. The jurisdiction of the Income Tax Officer to start proceedings u/s 34 of the Act on the alleged ground of escaped assessment cannot be doubted. The fact that the petitioners claim exemption u/s 4(3)(i) of the Act would not defeat the jurisdiction of the officer but would not only enable the petitioners not to be assessed if ultimately the officer were to hold that the income of the trust would be exempt. The officer has also the jurisdiction to call upon the petitioners to submit the statutory return u/s 22(2) of the Act. It seems that the petitioners have now filed the returns. They, however, submit that the officer should not proceed with any enquiry to make the assessment because of the applicability of section 4(3)(i) of the Act. This again is a matter which would in no way affect the jurisdiction of the officer but which would eventually have a bearing on the question whether the income is really assessable to tax or not. It cannot therefore be said that the officer has transgressed his jurisdictional limits either in the matter of his having issued notices u/s 34 or in his attempt to hold an enquiry as regards the true character of the income of the petitioners, viz., whether the income is outside the purview of the Act.

15. The scope of a writ of prohibition is fairly clear. A writ of prohibition is an instrument of judicial control to prevent an excess or abuse of jurisdiction by inferior tribunals. Where a tribunal assumes or threatens to assume a jurisdiction which it does not possess prohibition may issue so long as the proceedings are not complete. Prohibition also lies for a departure from rules of natural justice. If the presiding officer of the inferior tribunal is interested in the lis or is otherwise biased he can be restrained by prohibition from acting further in the matter. It is, however, well-settled that prohibition will not lie to correct an error of law, or a mere irregularity of procedure, or a wrong decision on the merits of proceedings unless there is an excess of jurisdiction. Sometimes the two writs, prohibition and certiorari, overlap. In one action the applicant may seek to quash an order and restrain an imminent transgression of jurisdiction. But, the scope of

prohibition is narrower than that of certiorari. While certiorari may go to correct a manifest error of law on the face of the record even if the tribunal had acted within its jurisdiction, prohibition cannot prevent a threatened irregularity or illegality by the tribunal within its ostensible jurisdiction. "No jurisdictional fault, no prohibition," would not merely be a good working rule in the administration of writs, but would be a succinct and correct statement of the nature and function of a writ of prohibition.

16. Ferris in his book on the Law of Extraordinary Legal Remedies observes thus :

"It is well settled that a writ of prohibition may not be used to usurp or perform the functions of an appeal, writ of error or certiorari or to correct any mistakes, errors or irregularities in deciding any question of law or fact within its jurisdiction. The office of the writ,... is to prevent an unlawful assumption of jurisdiction, not to correct mere errors and irregularities in matters over which the court has cognizance where there is authority to do the act, but the manner of doing it is improper, the writ will lie. In other words, whatever power is conferred may be exercised, and, if it be exercised injudiciously, erroneously or irregularly, it amounts to error merely and not to a usurpation or excess of jurisdiction. In such a case, however gross the error, irregularity or mistake, the writ does not lie, not because, as is sometimes erroneously stated, there exist other adequate remedies, or such remedies are inhibited, but for the reason that there has been no usurpation or abuse of power". (page 439).

17. The question that arises for consideration is whether the Income Tax Officer has exceeded or is about to exceed his powers under the statute. Mr. K. Rajah Ayyar, the learned counsel for the petitioners, contended that if the income of the trust should not be taxed in view of section 4(3)(i) of the Act the officer must be deemed to be acting in excess of his jurisdiction in compelling the petitioners to participate in the proceedings for assessment. But unless and until it is established that the petitioners are clearly within the ambit of section 4(3)(i) of the Act the Income Tax Officer would have jurisdiction to conduct the assessment proceedings. It must not also be forgotten that it is part of the jurisdiction of the officer himself to decide the question of exemption claimed by the petitioners. Mr. Rajah Ayyar did not dispute this position, but, he however, submitted that there is no necessity for any enquiry in his behalf as the terms of the trust deed, read in the light of section 4(3)(i) of the Act, clearly establish that the income ought not to be taxed. In our opinion the question of applicability of section 4(3)(i) of the Act, cannot be determined by a bare perusal of the terms of the written instrument of trust.

18. We shall now examine section 4(3)(i) of the Act to see whether the contention of the petitioners can be sustained. A claim for exemption should satisfy four essential condition : (1) The property from which the income is derived should be held under trust or other legal obligation. (2) It should be so held for religious or charitable purposes. ("Charitable purposes" is defined to include relief the poor, education, medical relief and advancement of any other

object of general public utility). (3) Where property is held wholly for religious or charitable purposes the exemption would be available only to such portion of the income as is in fact applied or accumulated for application; where the property is held in part only for religious or charitable purposes the exemption is limited to income in fact applied or finally set apart for application for such purposes. (4) The portion of the income as is in fact applied or accumulated or set apart for application to religious or charitable purposes must be utilised within the taxable territory. The Act also limits the scope of exemption only to income from property held under a trust or other legal obligation which is not for private religious purposes now enuring for the benefit of the public. It is quite clear that the exemption is available only as regards the income which is devoted for religious or charitable purposes or which is accumulated to be devoted for that purpose or which is set apart for that purpose. It is quite essential that not merely should the property be held in trust for religious or charitable purposes but also that the purpose must be carried out by the application of the income. Mr. Rajah Ayyar conceded that it would be open to the department to go into the question as to how far the income of the Thanthi Trust was in fact used and appropriated for the charitable purposes mentioned in the deed of trust. That, therefore, an enquiry as regards the applicability of section 4(3)(i) of the Act is called for and is perhaps inevitable cannot be doubted. Section 4(3)(i) has not merely to be read along with the various sub-clauses mentioned therein but has to be applied to the facts and circumstances of each case notwithstanding the declaration of trust for religious or charitable purposes solemnly made in written instruments. We do not think that it would be a sound proposition of law to state that the Income Tax Officer should be bound by the language of the instrument and should not be permitted to look outside the instrument to determine the true character of the income. What is decisive is not the phraseology of the deed which is only what the author of the trust professes to do, but what follows the creation of the trust. The nature of the trust, whether it is religious or charitable, private or public, may be gathered from the declared objects of the trust. There can be no extrinsic evidence to determine this. But the true purpose of the trust cannot be concluded by the deed of trust. A declaration of a religious or charitable purpose will not, by itself, be sufficient to fulfil the requirements of the exempting provision. The property must be held under a trust or other legal obligation for a religious or charitable purpose. Whether it is so held or not would depend upon the recitals in the document and conduct of the assessee. Mr. K. Rajah Ayyar contended that the department has not attacked the deed as mere sham to defeat tax, and that, therefore, no scrutiny is called for to determine whether or not the trust is of a kind falling within the section. He further contended that a deviation, if any, by the assessee from the declared purpose would amount to breach of trust but would not detract from the declaration and that if such a declaration is within the ambit of section, the assessee would be entitled to the benefit of its saving without adducing proof aliunde to the deed. We are unable to accept this as the correct position in law. In our opinion, the department is not precluded from ascertaining the true purpose of the trust, without being limited

to the content of the trust deed, and muzzled by it.

19. We have already extracted the terms of the trust deed setting out the objects and purposes of the Thanthi Trust. One of the objects is to establish the daily as "an organ educated public opinion for the Tamil reading public". Whether this object is sufficient to clothe the trust with the character of a charitable trust is itself a difficult question. Supposing, however, that Dina Thanthi paper does not actually educate public opinion, then the claim for exemption would fail even on the footing that the purpose disclosed is a charitable purpose. Let us take a hypothetical case. A trust is constituted to carry on a daily newspaper with the avowed object that it should serve as an organ of educated public opinion. But, if in reality the paper merely served the purpose of carrying on a political propaganda for the advancement of any organisation or party and for the success of such party in electioneering campaign, can it be said that the income of the trust would be exempt u/s 4(3)(i) of the Act? The answer can only be in the negative. Will it be open to carry on a yellow press by a trust with the declared object of educating public opinion and claim the exemption? Certainly not. There can be no question that the declared object and purpose of the trust is one thing and the actual carrying on of the press is a totally different thing. If it were to be held that the true object and purpose of the trust should be gathered only from corners of the instrument of the trust it would lead to the strange result of forms taking precedence over the substance and tax being avoided by mere devices and tricks.

20. The decision in All India Spinners Association v. Commissioner of Income Tax was relied upon by the learned counsel for the petitioners in support of the proposition that the purpose of the trust should be gathered only from the document creating the trust. That was also a case where an assessee under the Indian Income Tax Act claimed the benefit of section 4(3)(i). The question referred to the Bombay High Court was : "Whether having regard to the objects of the Association and the manner in which they are carried out and the purpose for which its funds are applied the income of the Association is liable to Income Tax and/or super-tax?"

21. Mr. K. Rajah Ayyar relied upon the following passage in the judgment of Lord Wright at page 48 :

"It is not really questioned that the practice has been to use the surplus income for the purposes of the Association and that the business has been carried on in pursuance of the primary purpose in addition mainly by beneficiaries of the Association. The practice however is not enough. The purpose is to be ascertained from the constitution. In their Lordships judgment its provisions already quoted show a trust or binding obligation so to carry it on. The constitution is a written instrument, the terms of which bind not only the trustees and council, but the members who by their application for membership accept its rules. Any departure either by the trustee or council or members from the rules would be a breach of trust or legal obligation which the court could restrain."

22. It was found as a fact in that case that the real underlying object of the Association was to benefit the poor agriculturists in the villages, specifically at the time of the year when they had no work as agricultural labourers. The following passage indicated that the Board did not limit the enquiry regarding the true purpose to the written instrument. In fact there was no trust deed nor any clear declaration of trust.

"The limits fixed by the section must be strictly observed and its definition must be satisfied by the character of the Association and its activities. Whether that is so depends on the true construction of the section and on the meaning and effect of the constitution which defines the character of the Association. The construction of the section is obviously a question of law, but so also is the question what is the real purpose of the Association. The court must make its decision on the later point on the basis of the facts found for it, but given the facts, the question is one of law."

23. We are not prepared to hold that this decision is authority which would enable the assessee to prevent the department from going into the question as to what is the real object and purpose of a trust while claiming the benefit of section 4(3)(i) of the Act.

24. Learned counsel on both sides referred to the decision of the Judicial Committee in *In re Trustees of the Tribune* and to that of the Supreme Court in *Laxman Balwant v. Charity Commissioner, Bombay*. In the case before the Judicial Committee a testator his will declared that his property in the stock and good-will of the Tribune Press and Newspaper in Anarkali, Lahore, should vest permanently in a committee of trustees and that they should maintain the said press and newspaper in an efficient condition, keeping up the liberal policy of the said newspaper and devoting the surplus income of the press and newspaper after defraying all current expenses in improving the newspaper and placing it on a footing of permanency. The Income Tax authorities assessed the trustees to Income Tax in respect of the income of the trust. It was held by the Judicial Committee that the evidence as to the character of the newspaper, during the period the testator conducted it, did not establish that the dominant purpose of the trust was a political one. The object of the newspaper was to supply the province with an organ of educated public opinion, which was an object of general public utility, and so it was held that the trust income was exempt from taxation u/s 4(3)(i) of the Indian Income Tax Act.

25. The Supreme Court dealt with the case which arose under the Bombay Public Trust Act. The subject-matter of the trust was a printing press. The prime object of the trust was stated to be the fulfilment of the basic purpose which animated the activities of the late Lokamanya Tilak and which he sought to accomplish through the newspapers, *Kesari* and *Mahratta*, after he took charge of them. The will had direct the continuance of the two newspapers with their policy entirely unchanged. The trust deed stated that the object the Lokamanya sought to achieve through the said two newspapers was that of spreading political

education through the newspapers and thereby making people alive to their multifarious public activities conducive to the national ideal. It was held that the political purpose in the sense of a propaganda for the achievement of a political objective was not a charitable purpose as being one "for the advancement of any other object of general public utility" within section 9(4) of the Act and hence the trust was not required to be registered u/s 18 of that Act.

26. We do not find it necessary for the purpose of disposing of these writs to refer to these cases in detail as we are not now called upon to decide the question whether the income of the Thanthi Trust is exempt from Income Tax or not.

27. Mr. K. Rajah Ayyar for the petitioners, however, urged even the facts so far placed before the department are sufficient to establish that the income of the trust is prima facie not taxable. We are unable to accept this contention. The Income Tax Officer is not bound to confine himself only to the terms of the trust deed and to preclude himself from holding an enquiry into the matter on the question whether the declared charitable purpose as found in the instrument is really a charitable purpose and whether the whole or part of the income is to be excluded from tax and whether the purpose stated in the instrument is the real purpose. These are matters which are necessarily to be investigated and decided. At any rate, having regard to the materials now placed before us, we are of opinion that no safe conclusion can be reached as regards the applicability of section 4(3)(i) to the instant case. Nor are we satisfied that we have the necessary jurisdiction to go into that question at this stage in the face of the present evidence. That is matter which rests solely and exclusively with the officer at the present moment and we are unable to say how he can be deprived of that jurisdiction by the issue of writs of prohibition. We have already quashed the tentative decision of the Income Tax Officer as disclosed in his letter dated November 6, 1961. The Income Tax Officer will now be free to decide the question in the light of the terms of the instrument and in the light of further evidence in the case which he is entitled to call upon the assessee to produce. It seems to us that the petitioners have rushed to this court with writs of prohibition with a view to scotch the jurisdiction of the Income Tax Officer and to avoid a probe into the application of the income of the alleged trust. The petitioners are merely crying before they are hurt. If their contentions are well-founded they can urge them before the department itself, and, if they fail, they still have a remedy before the Income Tax Appellate Tribunal and a further remedy by way of reference to this court u/s 66 of the Act. In our opinion there is no jurisdictional error on the part of the Income Tax Officer and that, therefore, these writs of prohibition are wholly misconceived and unsustainable. In the result, Writ Petition No. 1393 of 1961 is allowed and the rule nisi is made absolute. Writ Petitions Nos. 276 to 282 fail and they are dismissed. The rule is nisi is discharged in each of these petitions. There will be no order as to costs in any of these petitions.

W.P. No. 1393 of 1961 allowed.

W.P. Nos. 276 to 282 of 1963 dismissed.