(1972) 01 OHC CK 0022

In the Orissa High Court

Case No : O.J.C. No. 305 of 1969

Secondary Board of Education APPELLANT

Vs

Income Tax Officer, Ward "E" RESPONDENT

Date of Decision : 05-01-1972

Acts Referred:

Constitution of India, 1950 — Article 226
Income Tax Act, 1961 — Section 10(22)

Citation : (1972) 38 CLT 148

Hon'ble Judges : G.K. Misra, C.J;S. Acharya, J

Bench : Division Bench

Advocate : G. Rath, for the Appellant; A.B. Misra, for the Respondent

Judgement

G.K. Misra, C.J.—The petitioner is the Board of Secondary Education, Orissa. For the accounting year 1967-68 the budget estimate of the Board was Rs, 43,15,61 and the revised estimate was Rs. 32,99,694. Annexure A is a print of the revised estimate for the year 1967-68 and budget estimate for the year 1968-69, Annexure B is the notice under sections 139(2) and 133 of the Income Tax Act, 1961, issued by the Income Tax Officer, Ward "G", Cuttack, to the petitioner asking it to file the return of income for the assessment year 1968-69. In compliance to the said notice the petitioner filed a return in the prescribed form showing its total income as nil. In Part IV of the said return receipts at Rs. 32,99,694 were shown ; but in the explanatory note (annexure C) the said receipts were claimed as being exempt from Income Tax u/s 10(22) of the Income Tax Act. The petitioner appeared before the opposite party on several days to explain the position. Without being satisfied with the explanation the opposite party issued the notice (annexure D) u/s 143(2) of the Income Tax Act. The writ application has been filed under Articles 226 and 227 of the Constitution for issue of an appropriate writ for quashing the aforesaid notices and the proceeding under the Income Tax Act initiated against the petitioner.

2. The sole question for consideration is whether the income of the petitioner is

exempt from Income Tax.

3. The exemption is claimed u/s 10(22) of the Income Tax Act, which runs thus:

"10. Incomes not included in total income.--In computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included--....

(22) any income of a University or other educational institution, existing solely for educational purposes and not for purposes of profit."

4. The Board of Secondary Education is not a University but it is undisputedly an educational institution. The expression "existing solely for educational purposes and not for purposes of profit" qualifies the words "a University or other educational institution". It is, therefore, necessary to examine if the Board of Secondary Education exists solely for educational purposes and not for purposes of profit.

5. It would be pertinent to indicate at this stage that there are certain educational institutions which exist for the purposes of profit. There are educational institutions in India privately started in which even the admission fee for each candidate runs to thousands of rupees. Many such institutions have been brought into existence for purposes of profit though education is imparted through those institutions. The income in such private institutions is more than the expenditure. The surplus is a profit and is distributed amongst the organizers of the institution. Such surplus income is clearly liable to Income Tax as the educational institution itself does not exist solely for educational purposes but mainly for earning profits. The dominant objective of such institutions is earning profits though incidentally education is imparted through them.

6. There are other classes of educational institutions which exist solely for educational purposes. Those institutions cannot be run efficiently without substantial income made from different sources. The sources of income generally are collection of fees from the students, grants given by the Government and donations. Such income may however be insufficient to cope with the growing needs when dynamic progress is intended to be made in educational sphere. To supplement such income those institutions may take recourse to some profit earning business. The profit would go to the general fund and would be appropriated towards expansion and development of educational schemes taken up by those institutions. In such a case, though incidentally profit is earned to meet the growing needs, all the same the institution exists solely for educational purposes and not for purposes of profit. Thus a distinction is to be kept in mind by looking into the dominant object of the institution. It is on the basis of these tests that this case is to be examined.

7. We would, therefore, examine the scheme and object of the Orissa Secondary Education Act, 1953 (Orissa Act X of 1953) (hereinafter to be referred as "the Act"). The short title of the Act is "An act to provide for the establishment of a

Board to regulate, control and develop secondary education in the State of Orissa."

8. The preamble of the Act runs thus :

"Whereas it is expedient to establish a Board to regulate, control and develop secondary education in the State of Orissa by providing varied courses with a view to equipping pupils for different occupations, for education in the University and for other cultural purposes, and to examine those who have completed a prescribed course of study and to award certificates to successful candidates and doing all other things incidental thereto ;

It is hereby enacted as follows :--...."

9. Section 11 of the Act deals with the powers and functions of the Board which have been enumerated in Clauses (a) to (z-i). These clauses may be extracted as they lead to the unequivocal conclusion that the Board exists solely for educational purposes ;

"(a) to prescribe courses of instruction for recognised institutions in such branches of secondary education as it may think fit ;

(b) to take steps to co-ordinate secondary education with University education on the one side and primary or basic education on the other ;

(c) to make regulations for the purpose of prescribing and recommending any book as a text book or a handbook and to undertake compilation and publication of such books ;

(d) to make regulations for imposing penalties, for acts of misconduct of students, teachers, examiners, examinees, printers of text-books or question papers and of persons connected with an examination of the Board ;

(e) to conduct examinations based on such courses as may be prescribed ;

(f) to admit candidates to its examinations in accordance with regulations ;

(g) to publish the results of its examinations ;

(h) to grant diplomas or certificates to successful candidates ;

(i) to recommend to Government in respect of teachers and other employees of secondary schools or other institutions controlled by it, conditions of service such as appointment, promotion, punishment, appeals against orders of punishment, transfer, pay, allowances, provident fund, pension and gratuity, if any, age of superannuation, etc., and to incorporate such conditions as approved by Government in the regulations ;

(j) to recommend to Government scales of pay or allowances if and when required by the Government for such of the employees of the industrial institutes, agricultural farms, vocational institutes, animal husbandry centres or fish culture institutes or laboratories, who may be appointed as part-time teachers or instructors in the secondary schools or institutions duly recognised by the Board ;

(k) to establish, control, regulate or administer new secondary schools or post-basic schools subject to approval of the State Government ;

(l) to bring about practical co-ordination between State-owned industrial institutes, factories or workshops or vocational institutes and the secondary schools, and also between industrial establishments and secondary or technical institutions by way of providing systematic practical training which will be complementary to the theoretical instructions at the schools or institutions ;

(m) to bring about practical co-ordination between the State agricultural farms, either model or experimental, or laboratories, sylviculture, farms or nurseries or State animal husbandry centres, poultry farms, dairy farms or laboratories or fish culture institutes or laboratories and the secondary schools or institutions either general, industrial, vocational or technical ;

(n) to provide for the use of land, buildings, implements, instruments, tools and plants, etc., on such terms and conditions as may be agreed upon between the Board and parties, farms, departments, institutes or institutions concerned subject to the approval of the State Government ;

(o) to frame regulations regarding the management of secondary schools such as constitution or reconstitution of managing committees, dissolution thereof when and where necessary, to take over the management under its direct control of such school other than Government secondary schools for such period as may be considered necessary, to assume the ownership of properties of such institutions which would be under its direct control ;

(p) to call for reports from the Department of Public Instruction on the conditions of recognised institutions or of institutions applying for recognition and to direct inspection of such institutions ;

(q) to recognise institutions for the purposes of admitting them to the privileges of the Board including examinations conducted by it ;

(r) to adopt measures to promote the intellectual, physical, moral and social welfare of the students in recognised institutions and to supervise and control the conditions of their residence, health and discipline ;

(s) to organise and provide for lectures, demonstrations, educational exhibitions and to take other measures such as provision of refresher courses for teachers as may be necessary to promote the standard of secondary education ;

(t) to institute and award scholarships, medals and prizes according to a scheme or schemes framed by the Board and approved by the Government ;

(u) to demand and receive such fees as may be prescribed ;

(v) to submit annual accounts and balance-sheet together with the annual report of the Board to the State Government for audit and to publish the audited accounts and balance-sheet in the Gazette ;

(w) to submit to the State Government its views on any matter with which it is concerned ;

(x) to co-operate with other authorities in such manner and for such purposes as the Board may determine ;

(y) to take measures necessary to provide military education, opportunities for organised social service and such other activities as the Board considers necessary, to inculcate in the minds of students enrolled in recognised institutions a high sense of citizenship and to train and prepare them to discharge their civic obligations effectively ;

(z) to furnish to the State Government such reports, returns and statements as may be prescribed by regulations and such other information relating to any matter under the control of the Board as the State Government may require; and

(z-i) to do such other acts and things as may be requisite in order to further the object of the Board as a body constituted to regulate and supervise secondary education."

10. Section 11(c) authorises the Board to make regulations for the purpose of prescribing and recommending any book as a text book or a handbook and to undertake compilation and publication of such books. Regulation 32(o) in Chapter VII of the Regulations prescribes that subject to the control of the Board, the executive committee shall have the power to undertake the printing of text books as and when necessary on the recommendation of the syllabus committees. Thus compilation, publication and printing of text books are prescribed by the Act and the regulations.

11. Section 12 deals with the Board fund. The Board shall have a fund called the Board fund to which shall be credited-

(i) its income from fees, endowments, donations and grants, if any ;

(ii) contributions which may be made by the State Government under such conditions as they may impose ; and

(iii) receipts from other sources.

12. Section 13 deals with custody and investment of Board fund. All moneys at the credit of the Board fund shall be kept in the Government treasury or at any bank as the Board may with the previous approval of the State Government determine ; provided that nothing in the section shall be deemed to preclude the Board from investing with the previous sanction of the State Government, any such moneys as are not required for immediate expenditure in any of the securities described in Section 20 of the Indian Trusts Act, 1882, or placing them

in fixed deposit in a bank approved by the State Government.

13. Section 14 prescribes as to how the Board fund shall be applied. Subject to the provisions of the Act the Board fund shall be applicable only to the payment of the charges and expenses incidental to the several matters specified in the Act and to any other purposes for which by or under the Act powers are conferred or duties imposed upon the Board.

14. Section 27 dealing with annual report and budget estimate runs thus :

27. (1) Except in the year in which the Board is constituted the President shall present to the annual meeting of the Board a report on the working of the Board during the last preceding financial year, together with a budget estimate showing in the form prescribed by regulations, the anticipated income and expenditure of the Board during the next succeeding financial year and such report shall be forwarded to the State Government within such time as may be prescribed,

(2) The budget estimate referred to in Sub-section (1) shall be presented in such manner as would not result in a deficit :

Provided that the State Government may under special circumstances sanction a deficit estimate subject to such terms and limitations as they may deem fit to impose."

15. Section 28 says that the Board shall keep accounts of its receipts and expenditure in the manner and form prescribed.

16. Section 29 prescribes that the accounts of the Board shall be examined and audited at least once each year by an auditor appointed by the State Government. A copy of the audited accounts together with the auditor''s report shall be published in the Gazette.

Chapter VIII of the Regulations deals with the finances of the Board.

17. It would thus be seen that by various statutory provisions the Board fund is controlled and utilised for the purpose for which the Board has been created. The income from receipts from other sources as referred to in Section 12(iii), and Chapter VIII of the Regulations would certainly include profits made by the Board by compilation, publication, printing and sale of text books as prescribed in section 11(c) and Regulation 32(o) in Chapter VII of the Regulations. The entire profit would, however, be credited to the Board fund and the said fund can be utilised or spent only for the purposes of the Act which are the spread and development of education as mentioned in the preamble and Section 11 of the Act. Thus, some of the receipts of the Board partake the character of profits but those profits are incidentally made as a result of an activity in furtherance of the object of the Board of Secondary Education. The object does not involve the carrying on of the activity for the purpose of profit. The object is to carry on the activity of advancement of education which incidentally results in profits which in their turn are devoted to the cause of education.

18. No direct decision on the point has been brought to our notice. All India Spinners'' Association v. Commissioner of Income Tax [1944] 12 ITR 82 (P.C.) dealing with a different provision of the Income Tax Act, 1922, gives some useful guide. The facts involved in the Privy Council case were as follows :

The dominant object and purpose of the All India Spinners Association, an unregistered and unincorporated association of individuals, was the development of spinning and khaddar. Though it was established with the consent of the All India Congress Committee as an integral part of the Congress organisation it had independent existence and powers unaffected and uncontrolled by politics. Out of the funds in its hands which were mostly contributed by donations from the public and subscriptions from the members of the association, the association bought charkhas and handlooms and supplied them to the poor people free of charge. It further bought raw cotton and gave the same to the said persons for spinning yarn out of it which yarn was then given out to the other poor people for hand-weaving into cloth. The wages paid to the spinners and weavers were not based on current wages prevailing for similar work but were fixed on the basis of giving to the said persons as far as possible an income sufficient to enable them to support their families. The cloth so woven was sold in the khaddar stores established by the association. The price charged to the public for such cloth was calculated on the basis of the cost price incurred by the association in the manner hereinbefore stated plus a certain percentage for shop and overhead charges, without any reference to or connection with the demand for the same and the price of similar mill cloth sold in the market. In the ordinary course the monies realised by the association by such sales were a little more or less than the cost calculated on the aforesaid basis. When there was a surplus in the amount realised by the sale of cloth, such surplus was utilised in the same manner as the other funds of the association inter alia in getting yarn and any other manufacture and providing wages for the persons engaged in such manufacture. There was no question of profit-making in the activities of the association. "The funds and assets" held by the All India Spinners Association were to vest in the board of trustees, who were also to be the executive council, and to hold the same for the purpose of the association. The council of association was to have independent existence and they were to do all things which may be necessary for the furtherance of its objects. There was a special provision enabling the council to act as an agency on behalf of the Congress to receive self-spun yarn as subscription to the Congress. There was no power to distribute any surplus income among its members. Every person wishing to join the association must sign an application to be enrolled stating that he had read the rules and forwarding his subscription.

19. On the aforesaid facts their Lordships held that on a fair construction of the constitution of the association it could not be said that no trust or legal obligation was created binding the association or its trustees or council to devote the property of the association from which the income was derived to the purposes for which the association was formed. The constitution was a written instrument,

the terms of which bound not only the trustees and council, but the members who by their application for membership, accepted its rules. It was further held that the purpose of the association was relief of the poor and included the advancement of other purposes of general public utility within the meaning of Section 4(3)(i). The special provision enabling the council of association to act as an agency on behalf of the Congress to receive self-spun yarn as subscription to the Congress was a separate and independent matter apart from the general object of the association and did not affect its freedom from political purposes. If an association is set on foot by a political organisation and is connected with it but still has for its real object the relief of poverty, its connection with the political organisation does not make its real object any the less charitable.

20. Coming to the point in issue the position of law can be put thus : Under the Act the Board has a fund. There are various sources of income constituting the fund. One of the sources of income is earning profits by compilation, publication, printing and sale of text books. The profits so earned enter into the Board fund. The income and expenditure of the Board is controlled and the entire expenditure is to be directed towards development and expansion of educational purposes. Even if there is some surplus it is not appropriated by others but remains as ft part of the sinking fund to be devoted to the cause of education as and when necessary. This being the objective and there being various ways of control of the income and expenditure, the Board of Secondary Education cannot be said to be existing for purposes of profits. It exists solely for purposes of education. The income of the Board cannot, therefore, be computed in the total income of the previous year u/s 10(22) of the Income Tax Act, 1961. The opposite party exercised his jurisdiction illegally in issuing the aforesaid notices which are liable to be quashed. Mr. Misra very seriously contended that at this preliminary stage of issue of notice the High Court should not interfere. There is no such hard and fast rule. Ordinarily, the High Court in exercise of its writ jurisdiction under Articles 226 and 227 of the Constitution does not interfere with an assessment proceeding when equally efficacious alternative remedy by way of appeal and reference is available. Such non-interference is not on account of lack of jurisdiction on the part of the High Court, but is due to exercise of discretion. Where the law is clear and the assessing authorities have no power to assess on account of exemption given under the Income Tax Act there is no reason why the High Court should not exercise its power to quash the notices. The preliminary objection is accordingly overruled.

21. In the result the writ application is allowed. A writ of certiorari be issued quashing the notices (annexures B and D). In the circumstances, there will be no order as to costs.

Acharya, J.

22. I agree .

