
(1996) 08 MAD CK 0102

In the Madras High Court

Case No : Writ Petition No. 11438 of 1989

S.RM.M.CT.M. Thiruppani Trust

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 20-08-1996

Acts Referred:

Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 — Section 20(1), 22

Citation : (1997) 1 CTC 695 : (1997) 2 LW 487

Hon'ble Judges : Ali Mohamed, J

Bench : Single Bench

Advocate : C. Ramakrishnan, for Vishnu Mohan, for the Appellant; P. Rajamanickam, Additional Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

Ali Mohamed, J.—The prayer of the petitioner is to issue a writ, direction or order in the nature of certiorari or other appropriate writ calling

for the records of the 2nd respondent in Rc.J2.No. 67077 of 1988 on his file and quash the order dated 9.5.1989 made therein (confirming the

order of the 3rd respondent in A2/SRA/4/81, dated 19.9.1988.

2. The petitioner herein is S.RM. M.CT.M Thiruppani Trust. In the affidavit filed by one of the trustees of the petitioner trust, it is stated that his

grandfather, the late Sir. M. Ct. Muthiah Chettiar, executed a deed of declaration of trust on 20th October, 1930 and registered the same in

Rangoon. Since the original trust deed was lost during World War II the trust was reiterated by a deed of declaration of trust executed by him and

his elder brother Sir. M. CT. Muthiah on 12.2.1969. The main objects of the Trust are renovation of Hindu temples and endowing and maintaining

educational institutions in Madras and endowing hospital and granting relief of

the needy.

3. It is farther stated that in furtherance of the objects of the trust, the property known as Rama Vilas, bearing Door No. 78, Luz Church Road,

Mylapore, Madras 4 (Comprised in Rs. No. 1649/2 Mylapore, to an extent of 61 grounds and 1395 sq.ft and the building thereon) was acquired

in July, 1970 for running a school therein. The M. CT.M. Chidambaram Chettiar Matriculation Higher Secondary School with L.K.G. U.K.G.

classes I to VII was started in the said premises in the year 1980-81. Subsequently, the school was upgraded as a Matriculation School in 1984-

85 and the School has, since, been upgraded as a Higher Secondary School in 1989 after obtaining the requisite sanction from the Director of

School Education, Madras. As per the orders of the Director, dated 29.11.1985, and 2.3.1989, the school is required to provide adequate

accommodation and sanitary facilities, adequate laboratory and library facilities and adequate play area and offer vocational courses as a

precondition for recognition and upgradation.

4. The petitioner further states that there are about 500 pupils in the School now. The School has an efficient staff and well equipped library and

laboratories. By reason of the courses of studies offered and the efficient management and the devoted work of qualified teachers, the School has

become very popular in the city. In fact, the large building with plinth area of about 12000 Sq. ft. and play fields in the compound of an extent of

over 60 grounds in the heart of the City are and added attraction for the School and add to its utility and service in the curricular and co-curricular

pursuits; the open site within the compound is necessary for the additional constructions contemplated for the inevitable expansion of the growing

school.

5. It is further stated that in pursuance of the notice dated 28.10.1980 received from the 2nd respondent, the petitioner submitted a return u/s 7(1)

of Tamil Nadu Urban Land (Ceiling & Regulation) Act 24 of 1978 along with a topo sketch of the property in question and an attested copy of the

Trust Deed. It was repeatedly pointed out that their Trust is a public charitable trust and this has been accepted by the Income Tax authorities and

that the urban land was purchased by the Trust for establishing and maintaining a school and that the Trust is entitled to exemption u/s 20(1) (iv) of

the Tamil Nadu Urban Land (Ceiling and Regulation) Act (hereinafter called the Act) Copy of the accounts of the Trust for the years ended

13.4.1978 was also made available to show the charitable acts and the public nature of the Trust.

6. Since the Act has no application to lands held by public charitable or religious trusts like the petitioner trust, it was advised to file a petition to the

Secretary to the Government for exemption. Accordingly, a petition dated 16.2.1981 stating that the Rama Vilas land was purchased only for

educational purposes and hence may be exempted from the provisions of the Act.

7. By letter No. 14321/A-2/81-5, dated 13.8.1984, the Additional Secretary to Government, Revenue Department chose to reject the request for

exemption permitting the petitioner-Trust to retain the excess vacant land stating that nominal fees are collected from the students and as compared

to the income of the Trust, only a small amount is spent for charitable acts and the Trust gets a margin from its income and from running the school

and in the circumstance, it is seen that the Trust is running the school with a profit motive. It is submitted that there is no factual or legal basis for the

reasoning and conclusion of the Government in holding that the Trust is running the school with profit motive and the rejection of the request for

exemption is, therefore illegal. The said order cannot nullify or abridge the right of the petitioner-Trust which is totally exempt from the provisions of

the Act since the exclusion of the provisions of the Act to the petitioner-Trust is a statutory prescription and does not depend upon the grant of

exemption or permission by the Government.

8. It is further stated that, thereafter, the third respondent competent authority issued a notice dated 25.6.1985 u/s 9(4) of the Act, calling for

objections to the draft statement and attaching a sketch showing the land proposed to be acquired out of a total extent of 61 grounds 1395 Sq.Ft.

in R.S.No. 1644/2 Mylapore and an extent of 43 grounds and 0840 Sq.ft. or 10667 M was proposed to be acquired as excess vacant land. The

petitioner submitted detailed objections on 30.9.1985 pointing out that under Explanation (2) to Section 20(1)(iv) of the Act, not only a public

charitable or religious trust is excluded from the provisions of the Act but an educational institution of a public nature is also specifically excluded

and claiming total exemption u/s 20(1)(iv) of the Act.

9. The petitioner-Trust is aggrieved by the impugned appellate order passed by the second respondent u/s 33 of the Act which is against the order

of the Competent Authority, Mylapore u/s 9(5) of the Act in its proceedings A2.SRA4/81 dated 19.9.1988. The appeal of the petitioner was

rejected on the following grounds.

The appellant-Trust have stated about the definition of public Trust and Charitable Trusts under various Acts to substantiate their claim. The Tamil

Nadu Urban Land (Ceiling and Regulation) Act of 1978 is different from the other Acts and the contention of the appellant therefore is not

acceptable. The Section 20(iv)(2) of the Tamil Nadu Urban Land (Ceiling and Regulation) Act clearly states that charitable purpose includes relief

to the poor medical relief and the advancement of any other object of general public utility not involving the carrying on of any activity for profit.

But this trust runs with the commercial objective and therefore it is not eligible to feet automatic exemption u/s 20(1)(iv) of the Act as held by the

Government earlier. Under the circumstances, the orders u/s 9(5) of the Act passed by the Competent Authority, Mylapore on 19.9.1988 is found

to be in order and the appeal u/s 33 of the Act filed by the above Trust is dismissed as devoid of merits.

10. Mr. C. Ramakrishnan, learned counsel for the petitioner vehemently contended that there are infirmities in the impugned order and it is not

sustainable in law. He invited the attention of this Court to the Trust Deed dated 12th February, 1969 executed by the late M.CT. Muthiah and

M.CT. Pethachi. The Trust Deed reads as follows:-

S.RM.M. CT.M. Thirupani Trust Deed. The Declaration of Trust made the Twelfth day of February 1969, between Mr. M.CT. Muthiah, aged

about 40 years residing at "Bedford House" Vepery, Madras-7 and Mr. M.CT. Pethachi, aged about 35 years, residing at "Bedford Villa",

Santhome, Madras 28 sons of the late Mr. M.CT. Chidambaram Chettiar, hereinafter called the "Declarants" (which expression shall mean and

include the members of their and each of their families, representatives and assigns) of the one part and Mr. M. CT. Muthiah residing at "Bedford

Villa", Santhome, Madras-28, hereinafter called the "Trustees" (which expression shall mean and include the said Mr. M.CT. Muthiah and Mr.

M.CT. Pethachi as Trustees of the religious and charitable Trust known as S.RM.

CT.M Thiruppani Trust of their and each of their successors in office as Trustees or Trustee of the above mentioned Trust) of the other Part. Whereas Sir. M.CT. Muthiah Chettiar, the grandfather of the Declarants had during his life time, set apart subject to his scale control and management by his family sum of money in Trust for effecting and carrying out every Thiruppani such as repairs of old Hindu temples, building new Hindu temples, giving aids or establishing a fresh any hospital, educational or industrial institution or for relief of poor or afflicted to otherwise and in general any object of a religious or charitable nature and whereas the funds thereof were vested in the family money lending and banking business known as S.RM.M.CT.M. Chetty Firm at Rangoon and whereas after the death of the said Sri. M.CT. Muthiah Chettiar in 1929 for the purpose of preventing any future dispute and otherwise for declaring the Trust the late Mr. M.CT.M. Chidambaram Chettiar, father of the Declarants executed an instrument of declaration of Trust on 20th day of October, 1930 and get it registered in Rangoon and whereas during the second World War when Rangoon was attacked by the enemies, the original of the said Trust Deed and other papers were lost by fire or enemy action.

WHEREAS Sri M.CT. Chidambaram Chettiar died on 13.3.1954 and thereafter, Sri, M.CT. Muthiah and Sri. M.CT. Pethachi have been

functioning as trustees in accordance with the provisions contained in the instrument of Trust dated 20th October, 1950.

AND WHEREAS it has become necessary for various purpose to have another Instrument of Trust executed by the declarants, incorporating

substantially all the terms and conditions contained in the aforesaid Instrument of Trust dated 20th October, 1930 subject only to such changes as

have become necessary owing to changed circumstances NOW THIS DECLARATION OF TRUST WITNESSETH AS FOLLOWS:-

1. The said declarants do hereby declare that the Trust fund, which was Rs. 5,79,235.75 on the 15th June, 1930 and which, after taking into

account the various amounts expended for the purposes of the Trust in the succeeding years, now consists of various investments in companies and

Government securities, advances maintained by the Trust and Balance Sheet the latest Balance Sheet being as on 13th April, 1968 and that neither

the said declarants nor any other person or person whom so ever have any interest in the said fund or any part thereof.

2. Sri. S.RM.M.CT.M. Chidambaram Chettiar was a Trustee for his natural life. His brother Sri. S.RM.M.CT.M. Muthiah Chettiar did not

become a Trustee of this Trust, and, upon the death of the said Chidambaram Chettiar, the Declarants herein being his sons, became the Trustees

pursuant to-Clause (2) of the said instrument of Trust dated 20th October, 1930 and they shall be the Trustees of the Trust for their respective

lives, and upon the death of the survivor of them (and in the absence of any appointment by deed or will to the contrary), their nearest descendants

in the male line shall be the Trustees.

3. The Trustee of Trustee for the time being shall invest the Trust funds in such securities or firms or companies as to him or them may seem

reasonable or expedient. The trustees shall, in their sole discretion and as to may seem best, dispense, distribute, allocate or otherwise expend the

income of the said Trust funds or any Part thereof upon the following purpose.

(a) In repairing or renovating old Hindu, temples at such place or places and for the performance of religious ceremonies as daily offering in ritual

or establish and maintain pasumadam and nan-davanam for the use of Hindu temple vedic or sastric schools.

(b) In the support, maintenance or otherwise for the benefit of the High School, situated in Purasawalkam, Madras or any other School in Madras

or any other place or places.

(c) For the benefit of endowing any hospital, religious, educational or industrial schools and or colleges.

(d) For the relief of any sufferer from any famine, epidemic earthquake, floods or any other calamity.

(e) To contribute to any Red Cross society or other institutions, for the relief of any afflicted human beings.

(f) To appoint such staff for the performance of any religious or charitable objects as the Trustee or Trustees as the case may be may thing fit, it

being hereby expressly declared that the Trustees shall be liable to account to no one in relation to his or their administration of the income of the

said Trust funds. But the declarants or the Trustees for the time being having no other beneficial interest save and except the management or

maintenance or utilisation of the Funds of the Trust for the object herein before mentioned.

4. For more effectively carrying out the objects of the Trust the Trustees shall have the power whenever they deem it necessary to borrow from

banks or other financial institutions such amounts as may be found necessary by creating a charge on the security or securities or against F.D.

receipts which the Trust may hold to otherwise.

In Witness Where of The Declarants have signed this deed on the day and year first above mentioned.

sd./- M.CT. Muthiah

sd./- M.CT. Pethachi

Mr. C. Ramakrishnan, the learned counsel for the petitioner pointed out that S.RM.M.CT.M. Thiruppani Trust is a public charitable trust with

composite objects as seen from the object of the Trust and the main and primary object of the petitioner Trust is for charitable purposes. The other

object of the Trust are distributive in each one of the objects which are for charitable purpose. In particular, Mr. Ramakrishnan, learned counsel

for the petitioner referred to Clauses 3(b) and (c) of the petitioner Trust which is as follows:-

(b) In the support, maintenance or otherwise, for the benefit of the High School, situated in Purasawalkam, Madras or any other School in Madras

or any other place or places.

(c) For the benefit of endowing any hospital, religious educational or industrial schools and or colleges

11. The learned counsel further submitted that the Trust is registered under the Income Tax Act, 1961 as a charitable Trust. The learned Counsel,

Mr. C. Ramakrishnan further submitted that S.RM.M.CT.M. Thiruppani Trust was in existence when the Tamil Nadu Urban Land (Ceiling and

Regulation) Act, 1978 came into force on 3rd August, 1976. He also referred to a communication relating to the Recognition Order from the

Education Department, Proceedings of the Joint Director, Tamil Nadu School Education (Higher Secondary Education), Madras-6 According to

Item-3.

A minimum extent of 5 acres of land should be provided for the playground of the school

and contended that the petitioner-Trust is having only 61 grounds and 1395 sq.ft and submitted that even according to the above proceedings, the petitioner-Trust which is a school having less than 8 acres of land.

12. Mr. C. Ramakrishnan, the learned counsel referred to Section 20(1)(iv) of the Act and submitted that Section 20 deals with the category of

vacant lands to which the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 not apply such as the land owned by the Central and State

Government, or any local authority or any corporation established by or under a Central or Provincial or State Act or any Government company,

any military, naval or air-force institution or any bank or any public charitable or religious Trust including Wakf and required and used for any

public charitable or religious purposes. In particular, learned counsel referred to the Explanation given in clause (iv) which says:

For the purpose of this clause -

(1) "public charitable or religious trust", means a trust for a public purpose or charitable or religious or of an educational nature and includes -

(i) any charitable or educational institution of a public nature:

(ii) any temple, math, mosque, church or other place by whatever name known which is dedicated to, or for the benefit of, or used as of right by,

any community or section thereof as a place of public religious worship;

(2) "charitable purpose" includes relief of the poor, medical relief and the advancement of any other object of general public utility, not involving the

carrying on of any activity for profit:

13. In this connection, learned counsel referred to the definition of the charitable purpose given in the Income Tax Act, 1961 u/s 2(15) during that

material time which is as follows:-

Charitable purpose includes relief of the poor, education, medical relief and the advancement of any other object of general public utility, not

involving the carrying on of any activity for profit.

and contended that the definition of charitable purpose given in Section 2(15) of the Income Tax Act, 1961 has been incorporated in Sub-section

(2) of Section 20 of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, with the omission of the word, "Education" and contended

that the interpretation given to the said definition "not involving the carrying on

any activity of profit" given in Clause 2(15) of the Income Tax Act, 1961 should be applied to interpretation of Sub-section (2) of Section 20 of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 as

both the definitions in the respective Acts are in pari materia. In this connection, learned counsel referred to ruling of Constitution Bench of the

Supreme Court in Additional Commissioner of Income Tax, Gujarat Vs. Surat Art Silk Cloth Manufacturers Association, wherein it is observed as

follows:-

it is now well settled as a result of the decision of this Court in Dharmadeepti, Alwaye, Kerala Vs. Commissioner of Income Tax, Kerala, that the

word "not involving the carrying on of any activity for profit" qualify or govern only the last head of charitable purpose and not the earlier three

heads. Where, therefore, the purpose of a trust or institution is relief of the poor, education or medical relief, the requirement of the definition of

"Charitable purpose" would be fully satisfied, even if an activity for profit is carried on in the course of the actual carrying out of the primary

purpose of the trust or institution. But if the purpose of the trust or institution is such that it cannot be regarded as covered by the heads of "relief of

the poor" education and medical relief, but its claim to be a charitable purpose rests only on the last head "advancement of any other object of

general public utility", then the question would straight arise whether the purpose of the trust or institution involves the carrying on of any activity for

profit The last head of "charitable purpose" thus requires for its applicability, fulfillment of two conditions, (i) the purpose of the trust or institution

must be advancement of an object of general public utility; and (ii) that purpose must not involve the carrying on of any activity for profit. The first

condition does not present any difficult and as we have already pointed out above, it is fulfilled in the present case, because the primary purpose of

the assessee, namely, promotion of commerce and trade in art silk yarn, raw silk cotton yarn, art silk cloth, silk cloth and cotton cloth is clearly

advancement of an object of general public utility. But the real difficulty arises when we turn to consider the applicability of the second condition.

What do the words, "not involving the carrying on of any activity for profit" mean and what is the nature of the limitation they imply, so far as the

purpose of advancement of an object of general public utility is concerned? and

"that the test is, "what is the predominant object of the activity whether it is to carry out a charitable purpose or to earn profit?

14. Learned counsel further pointed out that the legislature has omitted the term, "Education" in Sub-clauses (2) of Section 20 of the Act. Even if the term, "Education" was included, the words, "not involving the carrying on of any activity for profit" will not apply to educational institution, will not apply to relief to the poor, will not apply to medical relief but wholly apply only for advancement of any other object of general public utility and even with regard to the advancement of the object of public utility if the main object of the Trust was not a commercial activity but for charitable purpose and the income is utilised for charitable purpose, the Trust will come under the category of public charitable purpose.

15. In support of the above contention, Mr. Ramakrishnan, learned counsel for the petitioner cited rulings of Supreme Court reported in Governing

Body of Rangaraya Medical College Vs. Income Tax Officer, A-Ward, and Commissioner of Income Tax, A.P. Vs. Andhra Pradesh State Road

Transport Corporation, . In Additional Commissioner of Income Tax, Gujarat Vs. Surat Art Silk Cloth Manufacturers Association, , the Supreme

Court observed as follows:

It is clear on a plain natural construction of the language used by the legislature that the ten crucial words "not involving the carrying on of any

activity for profit" go with "object of general public utility" and not with "advancement". It is the object of general public utility which must not

involve the carrying on of any activity for profit and not its advancement or attainment. What is inhibited by these last ten words is the linking of

activity for profit with the object of general public utility and not its linking with the accomplishment or carrying out of the object. It is not necessary

that the accomplishment of the object or the means to carry out the object should not involve an activity for profit. That is not the mandate of the

newly added words. What these words require is that the object should not involve the carrying on of any activity for profit. The emphasis is on the

object of general public utility and not on its accomplishment or attainment. The decisions of the Kerala and Andhra Pradesh High Court in

Commissioner of Income Tax Vs. Cochin Chamber of Commerce and Industry, and Andhra Pradesh State Road Transport Corporation Vs.

Commissioner of Income Tax, , in our opinion lay down the correct interpretation of the last ten words in Section 2, Clause (15). The true meaning

of these last ten words is that when the purpose of a trust or institution is the advancement of an object of general public utility, it is that object of

general public utility, and not its accomplishment or carrying out which must not involve the carrying on of any activity for profit.

16. In *Governing Body of Rangaraya Medical College Vs. Income Tax Officer, A-Ward, , the Supreme Court observed as follows.*"-

Merely because certain surplus arises from its operations, it cannot be held that the institution is being run for the purpose of profit so long as no

person or individual is entitled to any portion of the said profit and the said profit is used for the purpose and for the promotion of the objects of the

institution.

17. In *Commissioner of Income Tax, A.P. Vs. Andhra Pradesh State Road Transport Corporation*, the Supreme Court observed as follows:-

No activity can be carried on efficiently, properly, adequately or economically unless it is carried on business principles. If an activity is carried on

business principles, it would usually result in profit, but, as pointed out by this Court in *Additional Commissioner of Income Tax, Gujarat Vs. Surat*

Art Silk Cloth Manufacturers Association, it is not possible so to carry on a charitable activity in such a way that the expenditure balances the

income and there is no resultant profit, for, to achieve this, would not only be difficult of practical realization but would reflect unsound principles of

management. What Section 22, therefore, does when it states that it shall be the general principle of a road transport corporation that in carrying

on its undertaking it shall act on business principles is to emphasis the objects set out in section for which a road transport corporation is

established and to prescribe the manner in which the general duty of the corporation set out in Section 18 is to be performed. It is now firmly

established by the decisions of this Court in *Additional Commissioner of Income Tax, Gujarat Vs. Surat Art Silk Cloth Manufacturers Association*,

and *Commissioner of Income Tax, Bombay Vs. Bar Council of Maharashtra*, that the test is "What is the predominant object of the activity-

whether it is to carry out a charitable purpose or to earn profit?"

18. Mr. Ramaknshnan referred to Section 20(iv) of the Tamil Nadu Urban Land

(Ceiling and Regulation) Act, 1978 which is as follows:-

20 CHAPTER NOT TO APPLY TO CERTAIN VACANT LANDS :-(1) Subject to the provisions of (Sub-section (2) (3) and (4) noting in this

chapter shall apply to any vacant land held by-

(i)

(ii)

(iii)

(iv) any public charitable or religious trust (including wakf) and required and used for any public charitable or religious purposes:

provided that the exemption under this clause shall apply only so long as such land continues to be required and used or such purposes by such

trust.

Explanation :- For the purposes of this clause:-

(1) "Public charitable or religious trust" means a trust for a public purpose of charitable or religious or of an educational nature and includes-

(i) any charitable or educational institution of a public nature:

(ii) any temple, math, mosque, church or other place by whatever name known, which is dedicated to, or for the benefit of, or used as right by, any

community or section thereof as a place of public religious worship;

(2) ""charitable purpose"" includes relief of the poor, medical relief and the advancement of any other object of general public utility, not involving the

carrying on of any activity for profit;

(ii)

(v)

(vi)

(vii)

(viii)

(ix)

(x)

19. Learned counsel for the petitioner further contended that the inclusive definition of public charitable or religious trust given in Explanation (1)

includes educational institution of public nature and the petitioner's charitable

trust is running an educational institution of a public nature by providing education to High Secondary level and contended that the educational institution run by the petitioner trust squarely comes within the purview of the definition of educational institution given in the inclusive definition of public or religious trust under Explanation to Sub-section (iv) of Section 29 of the Act.

20. In this connection, the learned counsel referred to the English ruling reported in *Smith and Ors. v. Inner London Education Authority*, 1978 (1)

All.E.R. 411 Lord Denning referred to English Education Act of 1944 observed that:

upon the education of the people of this country, the fate of this country depends"".

He further referred to the Supreme Court case in *Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc.*, wherein the

Supreme Court referred to the Directive Principles of State Policy given under Article 45 of the Constitution of India, which says :

The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education

for all children until they complete the age of fourteen years.

and in this connection, the Supreme Court has observed as follows: _

In his other book, "Challenge of World Poverty" (Published in 1970) he discusses elaborately in chapter 6 "Education" - the reason for and the

consequences of neglect of basic education in this country. He quotes J.P. Naik, (the renowned educationist, whose report of the Education

Commission, 1966 is still considered to be the most authoritative study of education scene in India) as saying "Educational development is

benefiting the "haves" more than the "have nots". This is a negation of social justice and "planning proper" - and our constitution speaks repeatedly

of social justice (Preamble and Article 38(1)). As late as 1985, the Ministry of Education has this to say in para 3.74 of its publication ""challenge of

education- as policy perspective". It is stated there;

3.74 Considering the constitutional imperative regarding the universalization of elementary education it was to be expected that the share of this

sector would be protected from attrition. Facts, however, point in the opposite direction. Form a share of 56 per cent in the First plan, it

declined to 35 per cent in the second plan, to 34 per cent in the Third plan, to 30 per cent in the Fourth Plan. It started going up again only in the

Fifth Plan, when it was at the level of 32 per cent, increasing in Sixth Plan to 36 per cent, still 20 per cent below the First Plan level. On the other

hand between the First and the Sixth Five Year Plans, the share of university education went up from 9 per cent to 10 per cent.

Be that as it may, we must say that at least now the state should honour the command of Article 45. It must be made a reality - at least now.

Indeed, the "National Education Policy - 1986" says that the promise of Article 45 will be redeemed before the end of this century. Be that as it

may, we hold that a child (citizen) has a fundamental right to free education up to the age of 14 years.

This does not however mean that this obligation can be performed only through the State Schools. It can also be done by permitting, recognising,

and aiding voluntary non Governmental organisations who are prepared to impart free education to children. This does not also mean that unaided

private schools cannot continue. They can, indeed, they too have a role to play. They mere the demand of that segment of population who may not

wish to have their children educated in State run Schools. They have necessarily to charge fees from the students. In this judgment, however we do

not wish to say anything about such schools or for that matter other private educational institutions except "professional colleges". This discussion is

really necessitated on account of the principles enunciated in State of Maharashtra Vs. Sukhdeo Singh and another Vs. State of Maharashtra

Through C.B.I. Vs. Sukhdev Singh alias Sukha and others, and the challenge mounted against those principles in these writ petitions.

21. It is further contended by Mr. C. Ramakrishnan that the second respondent in his impugned order has paid too much attention to the very

words of the Act without reference to the General Scheme and purposes. In this connection, learned counsel referred to Administrative Law by Sir

William Wade-Seventh Edition, 1994 at page 400 wherein the learned Author under the heading "Abuse of discretion" has stated as follows:

This has become the most frequently cited passage (though most commonly cited only by its nickname) in Administrative Law. I explains how

"unreasonableness" in its classic formulation, covers a multitude of sins.

22. Mr. Ramakrishnan further contended that the impugned order is unsustainable on the doctrine of mal-administration. In this connection, the learned counsel referred to "Judicial Review of Administrative Action" By De Smithe, 5th Edition at page 51 (1.103) wherein, the learned author as stated as follows:-

.....But mal-administration does not include an unreasonable exercise of a discretion unless there has been faulty administration in the manner in which it is reached e.g. not considering relevant facts, or taking irrelevant matters into account, or adopting a wrong, unfair or ill conceived procedure). While acknowledging this limitation, in the opinion of the Court of Appeal, an ombudsman went too far when he criticised the merits of a decision which as a matter of policy it was permissible for a local authority to reach. In that case Lord Donal has summarised the view of the court of Appeal in an earlier case by saying, administration and mal-administration in the context of the work of a local authority is concerned with. The manner in which decisions by the Authority were reached and the manner in which they were or were not implemented. ""If a decision is disproportionate this may constitute mal-administration. A local Government ombudsman has expressed the opinion that because there is mal-administration in the process, therefore, he could review the merits. It is preferable to say that mal-administration can vitiate a decision even if it is reached on the merits while doubt has been expressed on whether the term includes reaching a wrong decision because of a fundamental mistake of fact, if the mistake was itself attributable to a fault in administration or the "fact" constituted the basis upon which a decision was made, then mal-administration will be inferred. The New Zealand Ombudsman has power to report unreasonable or wrong discretionary decisions. A similar power is possessed by other overseas ombudsman.

23. He also referred to "Administrative Law" by Sir William Wade 1994 Edition wherein at p.89 the learned author had observed as follows :-

Mal-administration is a new term in the law, though not in the language. The Act does not explain or define it, as is perhaps natural since it requires only that the complainant should claim that mal-administration has occurred. Parliament was told that the word would cover, "bias, neglect, inattention, delay, incompetence, ineptitude, arbitrariness and so on", and that

"it would be a long and interesting list". It is necessary of course, that the complainant should have "sustained injustice" and the courts have held that the Commissioner should not report adversely unless that is so.

Furthermore, the Act, "declares" that the Commissioner is not authorised to question the merits of a decision taken without mal-administration by a

Government department or other authority in the exercise of a discretion vested in that department or authority".

There is thus a distinction between a decision tainted by mal-administration, which the Commissioner may question, and an unmeritorious decision,

reached without mal- administration, which he may not, the Commissioner's role is to identify and criticise mal-administration; he does not provide

an appeal on the merits against an unfavourable decision. In the past, after criticism by the Select Committee, the Commissioner was willing to

criticise decisions that were simply bad on their merits. However, several dicta have indicated that the Courts will intervene to stop a

Commissioner who interferes with the merits in the absence of mal-administration and the practice of the Commission has changed mere

disagreement will not be the basis of criticism. The distinction is drawn in the decided cases between the manner in which the decision is reached

and implemented (which is the concern of the Commissioner) and the merits of the decision (which should be eschewed by the Commissioner).

The manner in which a decision is reached or implemented can cover so many aspects of the decision that its merits, as a distinct regularity criticises

the weight attached to particular circumstances in making the decision; but criticism of the merits can, practically always, be presented as criticism

of the weight attached to some consideration or circumstances. In New Zealand the ombudsman is expressly empowered to report on any

decision which was unreasonable, unjust, based on mistake, on merely "wrong. The Commissioner should enjoy a similar power, "bad decisions

are bad administration and bad administration is mal-administration".

24. On the other hand, learned Additional Government Pleader submitted that the definition of charitable purpose given u/s 2(15) of the Income

Tax Act, 1961 and the interpretation of charitable purpose given by the Court should not be made applicable to the definition of charitable purpose

given u/s 20(2)(iv) and Sub-section (2) of Tamil Nadu Urban Land (Ceiling and

Regulation) Act, 1978 as the objects of the Income Tax Act, 1961 and the object of Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 are not one and the same and contended that if a charitable institution by running a school makes a profit, it will not be entitled to the general exemption from the operation of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 given u/s 20(iv) of the Act. Learned Additional Government Pleader further referred to the proviso to Section 20(iv) of the Act, which says that exemption under this clause shall apply only so long as such land continues to be required and used for any public charitable or religious purposes, and contended that the exemption is related to user of the property for public charitable purpose and contended that there is no infirmity in the impugned order.

25. Further he referred to the impugned order which itself says that taking into consideration the balance sheet of the school as on 31.5.1985

which shows that out of the income of Rs. 3,56,892.75 only Rs. 21,424.22 is the income over expenditure and submitted that there is a surplus or

a profit made by the school and as such the trust runs the School with commercial objective of making a profit and contended that there is no

infirmity in the impugned order and the petitioner is not entitled to blanket exemption from the operation of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978.

26. I have considered the contentions of the learned counsel for the petitioner and respondents. In the instant case, it is admitted that the petitioner

trust - S.R.M.M.C.T.M. Thiruppani Trust, Madras is a charitable institution. It is recognised as a charitable institution under the Income Tax Act.

The trust deed dated 12th February, 1969 has been executed by two trustees M.C.T. Pethachi and M.C.T. Muthiah. From a perusal of the Trust

Deed it is clear that the predominant activity of the Trust is to carry out charitable purposes such as to carry out necessary repairs of the old Hindu

temples, buildings new Hindu temples, giving aids or establishing afresh any hospital, educational or industrial institution or for relief of poor or

afflicted or otherwise and in general any object of a religious or charitable nature. It is thus a composite trust, and each object is for charitable

purpose and as per Clause 3(c) and one of the objects of the Trust is the running of schools and colleges.

27. It is also admitted that the M.C.T.M. Chidambaram Chettiar Matriculation School has in its possession in a total extent of 61 grounds and

1395 sq.ft. out of which the excess vacant land according to the respondent is 43 grounds 0840 sq.ft.

28. The point for consideration is whether the excess urban land owned by the petitioner trust for running the school is exempt by virtue of

operation of Section 20(1)(iv) of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978. Section 20 falls in Chapter III of the Act

dealing with ceiling on vacant land. Section 20 says that Chapter III not to apply to certain vacant lands more particularly stated in the Section 20

which reads as follows :-

20 Chapter not to apply to certain lands:- (1) Subject to the provisions of (Sub-section (2),(3) and (4) nothing in this chapter shall apply to any

vacant land held by -

(i) The Central Government or any State Government or any local authority or any Corporation established by or under a Central or provincial or

State Act or any Government Company as defined in Section 617 of the Companies Act, 1956 (Central Act 1 of 1956);

(ii) any military naval or air-force institution;

(iii) any bank;

Explanation: In this Clause, "bank" means any banking company as defined in clause (c) of Section 5 of the Banking Regulation Act, 1949 (Central

Act 10 of 1949) and includes -

(a) the Reserve Bank of India constituted under the Reserve Bank of India Act, 1934 (Central Act 2 of 1934);

(b) the State Bank of India constituted under the State Bank of India Act, 1955 (Central Act 23 of 1955)

(c) a subsidiary Bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959 (Central Act 38 of 1959);

(d) a corresponding new Bank constituted Section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (Central

Act 5 of 1970)

(e) the Industrial Finance Corporation of India, established under the Industrial Finance Corporation Act, 1948 (Central Act 15 of 1948), the Life

Insurance Corporation of India, established under the Life Insurance Corporation Act, 1956 (Central Act 31 of 1956), the Unit Trust of India,

established under the Unit Trust of India Act, 1963 (Central Act 52 of 1963), the Industrial Development Bank of India established under the

Industrial Development Bank of India Act, 1964 (Central Act 18 of 1964), the Industrial . Credit and Investment Corporation of India, the

Industrial Reconstruction Corporation of India, and any other financial institution which the State Government may, by notification in Tamil Nadu

Government Gazette, specify in this behalf:

(iv) any public charitable or religious trust (Including wakf) and required and used for any public charitable or religious purposes;

Provided that the assumption under this clause shall apply only so long as such land continues to be required and used of such purposes by such

trust.

Explanation:- For the purpose of this clause:-

(1) "Public Charitable or religious trust", means a trust for a public purpose of charitable or of an educational nature and includes-

(i) any charitable or educational institution of a public nature;

(ii) any temple, math, mosque, church or other place by whatever name known, which is dedicated to, or for the benefit of, or used as of right by

any community or section thereof as a place of public religious worship;

(2) Charitable purpose" includes relief of the poor, medical relief and the advancement of any other object of general Public Utility, not involving

the carrying on of any activity for profit.

29. It is clear from a perusal of Section 20 (1) (iv) of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 that the provisions contained

in Chapter III shall not apply to certain vacant lands held by any public charitable or religious trust (Including wakf) and required and used for any

public charitable or religious purposes provided that the exemption under this clause shall apply only so long as such land continues to be required

and used for such purposes by such trust. In the explanation, it is made clear that for the purpose of this clause public charitable or religious trust

(omitting religious for the time being) means, a trust for a public purpose of an educational nature and includes: (i) any charitable or educational

institution of a public nature. From a perusal of explanation contained in Section 20 (1) (iv) of the Act, it is clear that an educational institution of public nature run by any public charitable trust and vacant urban land held by such trust are exempt from the operation of Urban Land (Ceiling and regulation) Act, 1978.

30. Further there are infirmities in the impugned order as it erroneously applies the provisions of Sub-section (2) of Section 20 to the petitioner

Trust. In this connection, Sub-section (2) of Section 20 says charitable purpose" includes relief of the poor, medical relief and the advancement of

any another object of general public utility not involving the carrying of any activity of profit. The definition of "charitable purpose" given u/s 2(15)

of the Income Tax Act, 1961 during the material time when the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 was enacted reads as

follows:-

Charitable purpose" includes relief of the poor, education, medical relief and the advancement of any other object of general public utility not

involving the carrying of any activity for profit.

Section 20 (2) of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 reads as follows:-

Charitable purpose" includes relief of the poor, medical relief and the advancement of any other object of general public utility, not involving the

carrying on of any activity for profit.

It is significant to note that both Section 2(15) of the Income Tax Act, 1961 and Section 20 (2) of the Tamil Nadu Urban Land (Ceiling and

Regulation) Act, 1978 during the material time are in partly material and identical. The only difference is the omission of the term, "education" in

Sub-section (2) of Section 20 of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, and the State Legislature has omitted the term,

"education" in Sub-section (2) of Section 20 as Explanation to Section 20 (1) (iv) defines public charitable trust to mean a trust for a public

purpose of an educational nature and the inclusive definition (i) includes educational institutions of public nature. A Constitution Bench of the

Supreme Court in Additional Commissioner of Income Tax, Gujarat Vs. Surat Art Silk Cloth Manufacturers Association, has observed as

follows:-

It is now well settled as a result of the decision of this Court in Dharmadeepti, Alwaye, Kerala Vs. Commissioner of Income Tax, Kerala, that the words "not involving the carrying on of any activity for profit" qualify or govern only the last head of charitable purpose and not the earlier three heads. Where, therefore, the purpose of a trust or institution is relief of the poor, education or medical relief, the requirement of the definition of "charitable purpose" would be fully satisfied, even if an activity for profit is carried on in the course of the actual carrying out of the primary purpose of the trust or institution.

31. Further, there is another error committed by the second respondent by assuming that education is included in the definition of charitable purpose" given under Sub-section (2) of Section 20 of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978. Applying the interpretation given to Section 2(15) of the Income Tax Act to the words in Section 20 (2) of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, not involving the carrying on of any activity for profit, will apply only to last category, viz., the category falling under general public utility and not to other earlier category such as relief of the poor and medical relief. It is pertinent to note that the category "education " has been deliberately omitted by the legislature in the definition of "Charitable purpose" given u/s 20 (2) of the Act. Therefore there is an error in the impugned order by applying the test of not involving the carrying of any activity for profit which applies only to public utility concerned and not to educational institution. It is pertinent to point out that the educational institution of a public nature run by any public charitable trust are dealt with separately. I am therefore of considered view that any vacant urban land held by a public charitable trust and required and used for any educational institution of public nature like the petitioner-trust are outside the purview of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978.

32. There is yet another error in the impugned order as there is an abuse in the exercise of discretion by the first and second respondent. The first and the second respondents have paid too much attention to the mere words in Section 20 (2) of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, for alleged profit making of the petitioner-trust without much attentions to the object of the enactment and general scheme

and purpose of the Act. The object of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 as seen from the preamble of the Act reads

as follows:-

An Act to provide for the imposition of a ceiling on vacant land in urban agglomerations, for the acquisition of such land in excess of the ceiling

limit to regulate the construction of building's on such land and for matters connected therewith, with a view to preventing the concentration of

urban land in the hands of a few persons and speculations profiteering therein and with a view to bringing about an equitable distribution of land in

urban agglomerations to sub-service the common good.

It is clear from the preamble of the Act that the object of the Act is to prevent the concentration of vacant urban land in the hands of a few persons

and speculations profiteering and for the purpose of bringing about an equitable distribution of land in urban agglomerations to subserve the

common good and the object of the Act is not take away the lands in the hands public charitable or religious trusts. In view of the said object,

specific provisions have been made for public charitable trust from the operation of the Urban Land (Ceiling and Regulation) Act, 1978. The

conditions imposed u/s 20 (1) (iv) are that the urban land should be required and used for any public charitable or religious purpose and the

exemption will endure as long as the land continues to be required and used for the said purpose by such trust. Further, Section 2 of the Act

declares "that this Act is for giving effect to the Policy of the state towards securing the principles specified in clause (b) and clause (c) of Article

39 of the Constitution"" In this connection, Article 39(b) and (c) says that the state shall in particular direct its policy towards securing (b) that the

ownership and control of material resources of the community are so distributed as to best subserve the common good and (c) that the operation

of the economic system does not result in the concentration of wealth and means of production to the common detriment. It cannot be said that the

vacant urban land required and used by the petitioner trust to run an educational institution of public nature results in concentration of public wealth

to the common detriment. Further, Article 41 of the Constitution among other objects says that the state shall within the limits of its economic

capacity and development make effective provisions for securing the right to

education. It is therefore the duty of the State under Directive principles of state policy not only to establish educational institutions but effectively secure the right to education. The Supreme Court in *Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc.*, has held the right to education is part of right of personal liberty guaranteed under Article 21 of the Constitution and is justiciable. In effect the petitioner-trust is fulfilling this object by establishing and running an educational institution of a public nature.

33. The learned counsel submitted that a writ may be issued even in cases of mal-administration by the administrative authorities by this Court under Article 226 of the Constitution. The concept of mal-administration" was evolved by Ombudsman in England appointed under the provisions of English Act by Parliamentary Commissioner Act of 1967. The said English Act established an Ombudsman for United Kingdom under the title of Parliamentary Commissioner. The Commissioner was empowered to receive complaints only through members of the House of commons and not as in many other countries from the public directly. The complaint must relate to mal-administration; and not the merits of the decision or the policy being pursued. It is said that nearly 43% of the complaint made to the Parliamentary Commissioner are rejected by this filter mechanism by the commissioner. Where the commissioner accepts jurisdiction and investigates the complaint, a report of the finding is sent to the principal officer of the department concerned and in most of the cases, the grievances are remedied at this stage and if the matter has not been remedied, he may lay a special report before each House of Parliament. The commissioner's Annual General Report is laid before Parliament. He makes recommendation as to the appropriate remedy and as to levels of suitable compensation. In many cases, the United Kingdom government normally accepts the recommendation of the Commissioner and grants compensation to the citizens, without admission of fault or liability" He must report the result of his investigation to the member through whom the complaint came. On his functions generally he reports to the two houses of Parliament and in particular he appears before the House of commons Select committee on the Parliamentary Commissioner which frequently examines both of him and officials of the department which he criticises. The

annual reports contain catalogues of injustices remedied, briefly summarised.

34. In the course of working Ombudsman in England, the doctrine of Mal-administration has been evolved. In Administrative Law by Sir William Wade Seventh Edition, the learned author observed "that mal-administration is a new term in the law, though not in the language. That act does not explain or define it, as is perhaps natural since it requires only that the complaint should claim that mal-administration has occurred. Parliament was told that the word would cover, "bias, neglect, inattention, delay, incompetence, ineptitude, arbitrariness and so on and that it would be a long and interesting list. Thus the principle of Mal-administration also includes a failure to mitigate the effects of rigid adherence to the letter of law where that produces manifestly inequitable treatment. It is necessary of course, the complainant should have sustained injustice and the courts have held that the commissioner should not report adversely unless that is so. Furthermore, the Act declares that the Commissioner is not authorised to question the merits of a decision taken without mal-administration by a Government department or other authority in the exercise of a discretion vested in that department or authority. There is thus, a distinction between the test pointed out by mal-administration which the Commissioner may question and without mal-administration, which he may not.

35. Even though the English Act does not define the term "mal-administration it is well settled in England that the word "mal-administration" would cover bias neglect, inattention delay, incompetence, ineptitude, arbitrariness and so on.

36. In appeal against the judgment of May, J, Lord Denning in Regina v. Local Commissioner for Administration for the North And East of England, 1979 LR 289 Observed as follows:-

Now there is very little authority either on what is not mal-administration or on what is or is not injustice in the present context. Professor S.A. de smith in his book, "Judicial Review" of Administrative Action, 3rd edition (1973) P. 49, quotes substantially from statements made by the late Mr.

R.H.C. Grossman when he was leader of the House of Commons during the debates on the Parliamentary Commissioner Act, 1967. Whilst very helpful, of course these are in no way authoritative."....

But Parliament did not define "mal-administration" It deliberately left it to the ombudsman himself to interpret the word as best he could, and to do

it by building up a body of case law on the subject. Now the parliamentary ombudsman, Sir Edward Compton, Sir has acknowledged openly that

he himself gained association by looking at the debates in Parliament on the subject:...

the meaning the word, mal-administration. It will cover, bias, neglect, inattention, delay, incompetence, ineptitude, perversity, turpitude,

arbitrariness and so on. "It would be a long and interesting list, "clearly open-ended, covering the manner in which a decision is reached or

discretion is exercised; but excludes the merits of the decision itself or of the discretion itself. It follow that "discretionary decision, properly

exercised, which the complainant dislikes but cannot fault the manner in which in was taken, is excluded, See Hansard, 734 H.C.Deb, Col. 51.

In other words, if there is no mal-administration, the Ombudsman may not question any decision taken by the authorities. He must not go in to the

merits of it or intimate any view as to whether it was right or wrong. He can inquire whether there was mal-administration or not. If he finds none,

he must go on and inquire whether any person has suffered injustice there by" ...

In the view of May, J, in short, the complaint must allege not only that the complainant suffered injustice but also that it was due to mal-

administration which he must specify expressly or by necessary inference.

37. Even though there is no Act similar to English Parliamentary Commissioners Act, 1967 in India, I am of the considered view that doctrine of

"mal-administration" may be applied with equal force in exercise of writ jurisdiction by this Court, under Article 226 of the Constitution of India, in

cases "mal-administration" by the administrative authorities and in appropriate cases, necessary direction may by given to enquire and investigate

whether there was mal-administration or not and whether any person has suffered injustice thereby and relief may be given to the aggrieved party.

In the instant case, I am not granting any relief under the doctrine of mal-administration as the impugned order is quashed and set aside.

38. For the reason stated above, I am unable to accept the contentions of the learned Additional Government Pleader. In effect, the contentions of

the learned Additional Government Pleader merely adopts the reasoning given in the impugned order by the second respondent. There is no force

in the contention of the learned Government Pleader to the effect that the element of profit has to be taken into consideration as a test to decide

whether the petitioner-trust is a charitable trust or not. As observed by the Supreme Court in Dharmadeepti, Alwaye, Kerala Vs. Commissioner of

Income Tax, Kerala, that the words "not involving the carry on of any activity for profit" qualify or govern only the last head of charitable purpose

and not the earlier three heads. Merely because certain surplus arises from its operations, it cannot be held that the institution is being run for the

purpose of profit so long as no person or individual is entitled to any portion of the said profit and the said profit is used for the purposes and for

the promotion of the objects of the institution. The latest laid down by the Supreme Court is, what is the predominant objects of the activity?

whether it is to carry out a charitable purpose or to earn profit? Further as already pointed out that the head "education" is omitted in Section 20

(2) of the Tamil Nadu Urban Land (Ceiling and Regulation) Act. However, there is force in the contention of the learned Additional Government

Pleader to the effect that the exemption u/s 20 (iv) of the Act shall apply only so long as such urban vacant land continued to be required and used

for any public charitable or religious purpose.

39. In the instant case, The petitioner-Trust namely, S.R.M- CT.M. Thiruppani Trust squarely comes under the exemption provided u/s 20 (1) (iv)

of the Tamil Nadu Urban Land (Ceiling and Regulation) Act and as the petitioner-trust with composite objects and one of the objects of the Trust

is to run an educational institution of public nature and as such the petitioner-trust is squarely covered within the definition of public charitable trust

and the school run by the trust is an educational institution of public nature. Making of profit is not relevant if the predominant object and activity of

the trust is to carry out charitable purpose. The predominant object and the activity of the instant Trust is a public charitable purpose. Further even

though there is a surplus of income over the expenditure by running the school, the surplus is ploughed back by the trustees for the advancement of

the educational activity of the school. It is pertinent to note that none of the trustees get any benefit by way of remuneration from the income of the

school. Accordingly, the vacant urban land required and used by the petitioner-trust for the school is outside the purview of the Tamil Nadu Urban

Land (Ceiling and Regulation) Act, 1978 by virtue of Section 20 (1) (iv) of the Act as long as the vacant urban land is required and used by the

petitioner-trust for the purpose of running the educational institution of public nature.

40. Mr. Ramakrishnan, learned counsel for the petitioner submits that the petitioner-trust has applied for putting up an additional building for the

school before the Madras Metropolitan Development Authority and the same may be disposed of expeditiously. The concerned authority consider

the application of the petitioner expeditiously on merits and in accordance with law. Accordingly, the writ petition is allowed. There shall be no

orders as to costs.