
(2011) 08 KL CK 0132
In the High Court Of Kerala
Case No : W.A. No. 372 of 2011

St. Sebastin's Visitation Hospital

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 18-08-2011

Acts Referred:

Citation : (2011) 4 KLT 104

Hon'ble Judges : C.N. Ramachandran Nair, J;B.P. Ray, J

Bench : Division Bench

Advocate : Bechu Kurian Thomas, for the Appellant; Mohammed Rafeeq, for the Respondent

Final Decision : Dismissed

Judgement

C.N. Ramachandran Nair, J.—The question raised is whether the Government was justified in declining building tax exemption to petitioner's hospital building for the reason that medical service is not rendered free of cost in such building. We have heard counsel for the petitioner and Government Pleader for the respondents.

2. Counsel for the petitioner has relied on Division Bench judgment of this court in Sacred Heart Hospital Vs. Secretary to Government, where the Division Bench has allowed exemption in respect of a hospital building owned by a charitable institution even though medical relief was not rendered free of cost. Government Pleader, however, referred to Full Bench judgment of this Court in Unity Hospital (P) Ltd. and Anr. v. State of Kerala and Ors. reported in (2011 (1) KLT 236 (F.B.) : 2011(1) KHC 125) wherein the Full Bench has held as follows:

Under clause (b) of S.3(1) of the Act, buildings that qualify for exemption are buildings used for religious, charitable or educational purposes or as factories or workshops. Each and every purpose covered by clause (b) of S.3(1) of the Act are independent and distinct, though some organizations may be involved in different activities all falling under clause (b). The concept of "free service" is

provided only in the explanation to the section, which defines charitable purpose which includes relief of the poor and free-medical relief. Charity as a concept essentially is service provided to the poor, which excludes commercial motives or profit. What is specifically provided in the explanation is that in order to qualify medical relief as a charitable purpose, medical service should be rendered to patients free of cost. This only means that hospital buildings will get exemption under the head "charity", only if medical service is rendered free in such hospital building.

Obviously the Division Bench which rendered the judgment on 9.3.2011 was not shown the Full Bench judgment wherein the Full Bench specifically held that exemption from building tax provided under S.3(1)(b) is not with reference to ownership of building, but with reference to nature and use of the building. If Full Bench judgment was seen by the Division Bench, they would not have taken the view expressed in the judgment. In any case we are not inclined to follow a Division Bench judgment, rendered contrary to clear findings by earlier Full Bench.

3. Counsel for the appellant submitted that the appellant is a charitable institution and so much so, the hospital building is entitled to building tax exemption. However, what we notice is that building tax exemption under S.3(1)(b) is geared to nature of use of the building and not to the objectives of the organization owning the building. In other words, if the building is used for charitable purposes, then it is entitled to building tax exemption, no matter the owner of the building is not engaged in any other charitable activity other than allowing the use of the building for charitable purpose. So much so, even a business concern is entitled to building tax exemption for any building used for charitable purpose. "Charitable purpose" is given an inclusive definition under the Explanation. However, what is made clear is that medical relief is understood as charity by the Legislature only when it is rendered free. In other words, a charitable institution rendering medical relief on chargeable basis is not entitled to exemption from building tax for the hospital building where medical relief is not rendered free of cost. Even though counsel for the appellant contended that the Full Bench has not considered exemption for hospital building and the findings should be treated only as obiter, we are unable to accept this contention because when the Section was dissected and interpreted, the Full Bench explained the nature and scope of exemption provided under the Act for hospital buildings. So much so, the findings of the Full Bench are not obiter but should be taken as laying down the law on the subject which binds the Division Bench. We, therefore, reject this contention. We, therefore, do not find any merit in the Writ Appeal and accordingly the same is dismissed.