

(1989) 12 KL CK 0018
In the High Court Of Kerala
Case No : W.A. No. 934 of 1988

State of Kerala

APPELLANT

Vs

St. Gregorios Medical Mission

RESPONDENT

Date of Decision : 13-12-1989

Acts Referred:

Constitution of India, 1950 — Article 136, 226, 32
Income Tax Act, 1961 — Section 2(15)
Kerala Building Tax Act, 1975 — Section 3, 3(1), 3(2), 5

Citation : (1989) 12 KL CK 0018

Hon'ble Judges : Varghese Kalliat, J; Paripoornan, J

Bench : Division Bench

Advocate : K. Janardhanan, Government Pleader, for the Appellant; M.P. Abraham, for the Respondent

Final Decision : Dismissed

Judgement

Varghese Kalliat, J.—This is an appeal by the Respondents in an Original Petition. It is against the judgment of a learned Single Judge. The chief question that arises for consideration in this Writ Appeal is an important question as to the right of exemption in regard to the buildings of the Petitioner in the Original Petition used as hospital buildings from the liability to pay building tax, under the Kerala Building Tax Act, 1975 (hereinafter referred to as the "Act"). The facts of the case are fully set out in the well considered judgment. They can be summarised quite shortly for the purpose of this judgment.

2. Petitioner in the Original Petition is St. Gregorios Medical Mission, Parumala. It is an institution registered under the Travancore-Cochin Literary, Scientific and Charitable Societies Registration Act (Act XII of 1955). Petitioner claimed exemption from the liability to pay building tax, under the Act. This was refused by the order, Ext. P-11. Petitioner challenged Ext. P-11 order. The learned Single Judge allowed the Original Petition. Hence the Respondents appeal.

3. From the facts narrated in the Original Petition, it is seen that the main object

for which the Medical Mission is established is to function as a service wing of the Parumala Seminary. The relevant clauses of the memorandum of articles of association are extracted in the petition itself. In the judgment, it is stated that the memorandum of articles of association was produced at the time of hearing. Further it is seen that before the Government a copy of the memorandum of articles of association of the Medical Mission was produced among other documents. The learned Single Judge has referred to the relevant and important clauses in the judgment itself. Clause II reads thus:

The mission is instituted to function as a service-wing of the Seminary. The funds of the Mission shall not be used for purpose other than the objects of the mission. On no account shall the Mission operate for profit. Any excess in income over expenditure shall be used only for furtherance of the object of the Mission.

Sub-clause (ii) of Clause IV makes it clear that one of the objects of the Mission is "To give free medical and general health services to the less privileged and poor, irrespective of community or caste according to the availability of funds". Sub-clause (vii) of Clause IV repeats the fact that the Mission is founded to establish or to conduct nursing homes, orphanages destitute houses, homes for the aged and infirm and educational or training institutions for Doctors, Nurses, Midwives, Pharmacists, Dietitians, Laboratory Technicians, and Ors. connected with or devoted to medical and allied services and to render financial and other aids to such institutions or trainees in such institutions.

4. u/s 5 of the Act, it is provided that every building, the construction of which was completed on or after 1st day of April, 1973 and the capital value of which exceeds Rs. 75,000 is liable to building tax at the rates specified in the schedule to the Act. Section 3 of the Act deals with exemption from the application of the Act itself. It is provided that the Act shall not apply to buildings used principally for religious, charitable or educational purposes or as factories or workshops. Explanation to Section 3 tells that "charitable purpose" includes relief of the poor and free medical relief. Clause 2 of Section 3 gives power to the Government to decide the question as to whether the building falls under Sub-section (1) of Section 3. Further in Clause 3 it is stated that the decision of the Government under Sub-section (2) shall be final and shall not be called in question in any court of law.

5. When the Petitioner was served with a notice for assessment of its building used for the purpose of hospital, the Petitioner approached this Court by filing O.P. No. 2462 of 1976. This Court disposed of the Original Petition with a direction that the authority concerned should refer the question to the Government, u/s 3(2) of the Act. Naturally, the decision should be on the question whether the buildings of the Petitioner are used for charitable or educational purposes. By Ext. P-8 order, the Government found that the buildings are not liable to be exempted under the Act. The Petitioner unsuccessfully attempted for a review of the order. The Government passed Ext. P-9 order refusing to review Ext. P-8 order. Petitioner challenged Exts. P-8 and P-9 orders

and this Court set aside the orders in O.P. No. 7106 of 1981 and directed the Government to reconsider the question once again. The Government passed the impugned order, Ext. P-11 holding that the Petitioner is not entitled to exemption u/s 3 of the Act. In the order, Ext. P-11 it is stated that the Petitioner has produced several documents. But there is absolutely no discussion or consideration of the nature and contents of the documents. The order proceeds to say that the Government have examined the case with reference to the documents produced. The principal basis for refusing exemption u/s 3 of the Act is that the building tax levied is a one time payment on the building which is used partially as a commercial enterprise. Further it is stated that to the extent there are paywards and services are rendered on payment of charges, the hospital is not a pure charitable enterprise. Finally it is stated that on account of the above facts, the Government do not feel that the building in which the hospital is housed should be given exemption from payment of building tax.... While challenging Ext. P-11, the Petitioner produced several documents along with the Original Petition. Exts. P-5, P-6 and P-7 are copies of the balance-sheets of the Medical Mission for the years ending 31st March 1984, 31st March 1985 and 31st March 1986. Petitioner filed C.M.P. No. 8848 of 1988 producing the statement regarding the income and expenditure for the year ending 31st March 1986 and the same was marked as Ext. P-7(a). Ext. P-10 is a copy of the letter sent by the Petitioner to the Government enclosing 8 documents referred to therein. Exts. P-2 and P-3 are two certificates. Ext. P-2 is a certificate issued by the then Minister for Food and Civil Supplies. In the certificate it is stated that the hospital in question is doing charitable services to the people of Central Kerala and that it is serving the people irrespective of caste, creed or community and it has become a place of solace and comfort to the people of the area. Further it is stated that the development of this hospital in all its specialities is a need of the people of the area and any help rendered to it will amount to serving the cause of the poor and downtrodden. Finally it is stated thus:

This institution being one doing charitable services in all respects is entitled to be included in the list of charitable institutions and to be made eligible for all the concessions extended to charitable institutions.

6. Ext. P-3 is a certificate issued by the Deputy Collector, wherein he has stated that St. Gregorios Medical Mission Hospital, Parumala, Mannar, Kerala is a charitable and non-profit making institution and the gift supplies received by them from abroad, are utilised for the benefit of poor and needy people irrespective of caste, creed or race. Ext. P-4 is a copy of the Government order reversing the order of Vazhappally Panchayat in respect of Anr. hospital holding that the said hospital was a charitable institution. Petitioner has stated in para 5 of the Original Petition that the Taluk Panchayat Officer, Tiruvalla has exempted the buildings used by the Petitioner as hospital from payment of property tax.

7. When the case was argued, the learned Single Judge, on the request of the Government Pleader, adjourned the case to enable the Government to file a

counter-affidavit. A counter-affidavit was filed on 5th April 1988. In the counter affidavit, it is stated that it is true that the hospital authorities grant some concessions in their bills to some poor people as and when they request for help. But the rooms in the building are allotted to inpatients charging daily rent and cost of medicines is realised from them. Though the stand taken by the Government in Ext. P-8 order dated 26th February 1981 was that "The hospital in question does not render free medical relief to poor, fees are being charged from all for treatment" in the subsequent order of the Government, Ext. P-11, as we have already stated, the reason for refusing exemption is totally different.. The reason stated is that the building tax levied is a one time payment on the building which is used partially as a commercial enterprise and that to the extent there are paywards and services are rendered on payment of charges, the hospital is not a pure charitable enterprise. The learned Judge, after a careful examination of the facts disclosed in the case, found that the decision of the Government that the buildings used by the Petitioner as hospital are not liable to be exempted is thoroughly erroneous and also found that considering the fact that the Government has been given sufficient opportunity to examine the question in the right perspective and the Government has failed to consider the matter as it ought to have been considered by making a proper assessment of the evidence produced before it, it is unnecessary again for this Court to direct the Government to consider the question afresh after quashing Ext. P-11. The learned Single Judge found sufficient and strong reasons to quash Ext. P-11. The learned Single Judge also found that there should be an affirmative order holding that the buildings used by the Petitioner as hospital are eligible for exemption u/s 3(1)(b) of the Act.

8. It is for a proper understanding of the contentions, we have summarised quite shortly the facts of the case and the findings of the learned Single Judge. Now we shall examine in the light of the submissions made by the counsel for the Appellant and the Respondent the correctness of the judgment of the learned Single Judge. At the outset, we would like to say that the learned Single Judge has considered all the relevant questions in great depth.

9. Petitioner in the Original Petition claimed exemption for the buildings used as hospital from the liability to pay building tax, u/s 3 of the Act. As we said earlier, the exemption is claimed on the basis that the buildings are used principally for religious, charitable or educational purposes. So naturally the learned Single Judge made an enquiry as to the question whether the buildings used by the Petitioner in the Original Petition are principally used for religious, charitable or educational purposes.

10. Being a question relating to charitable purposes, it is decorous and edifying to have a clear understanding as to what is the import and content of the words "charity" and "charitable purposes". In an old English decision *Morice v. Bishop of Dur* (1804) 9 Ves. 399, the word "charity" is understood in its widest sense to denote all the good affections men ought to bear towards each other; in its most

restricted and common sense relief of the poor. The legal meaning of the word differs from the popular meaning, and it has been said on the highest authority that charity in the legal sense is a word of art of precise and technical meaning *National Anti-Vivisection Society v. I.R. Comrs.* (1848) A.C. 31. A precise and satisfactory definition of charity in its legal sense has to be formulated. The dictum of Viscount Simonds in *I.R. Comrs. v. Baddeley* (1955) A.C. 572 still stands true "no comprehensive definition of legal charity has been given either by the legislature or in judicial utterance". But in this case, an explanation is given u/s 3 to the effect that charitable purposes includes relief of the poor and free medical relief. In *Jones v. Williams* (1767) Amb 651 Lord Camden L.C. said "Definition of charity; a gift to a general public use which extends to the poor as well as the rich". Gray, J. in an American case, *Jackson v. Phillips* 14 Allen 539 at 556 (1867) (U.S.) attempted a definition that "A charity, in the legal sense, may be more fully defined as a gift, to be applied consistently with existing laws, for the benefit of an indefinite number of persons, either by bringing their minds or hearts under the influence of education or religion, by relieving their bodies from disease, suffering or constraint, by assisting them to establish themselves in life, or by erecting or maintaining public buildings or works or otherwise lessening the burdens of Government". Though this definition is wider and comprehensive it is not broad enough. Certainly it includes objects which are unquestionably charitable, but these are not the only objects which are held to be charitable. It omits, for example, animal charities and trusts for the protection of human life or property. Several Writers have referred to the fourteenth century poem "The Vision of Piers Plowman". In this poem Truth advises anxious and rich merchants to obtain remission of sins and a happy death by devoting their wealth to charitable purposes in the following way:

And therewith repair hospitals help sick people mend bad roads build up bridges that had broken down help maidens to marry or to make them nuns find food for prisoners and poor people put scholars to school or to some other craft, help religious orders and ameliorate rents or taxes.

A learned Writer suggests that "a trust is charitable if a Chancery Judge thinks that accords with contemporary social ideas and policy on public good". [See (1968) *New Law Journal Annual Charities Review* 42, at 46].

11. Generally the Indian Statutes recognise all purposes which are charitable, according to English law, as charitable under the Indian Law. But there are, in addition, under the head of advancement of religion, there are charitable objects in Hindu law. West, J. in *Fatima Bibi v. Advocate-General, Bombay* ILR 6 Bomb. 42 said that "Objects which the English law would probably regard as superstitious are allowable, and even commendable in Hindu law".

12. When a question arises whether a particular purpose is charitable or not and it is for the general public utility or otherwise, the decision rests, with the courts In *Tribune Press v. I.T. Commissioner* 1939 P.C. 208, the Privy Council held that the question whether a particular object is of "general public utility, like the

question whether a particular trust is charitable, is a question of law and it is for the courts to decide the question. The Privy Council has extracted the following passage of Russell, J. in 1923 (1) Ch. 237 (Beatty v. London Spiritualistic Alliance Limited):

If a testator by stating or indicating his view that a trust is beneficial to the public, can establish that fact beyond question, trusts might be established in perpetuity for the promotion of all kinds of fantastic objects.

In the Charitable Endowments Act 6 of 1890 charitable purpose has been defined to include relief to the poor, education, medical relief and the advancement of any other object of public utility but does not include a purpose which relates exclusively to religious teaching or worship. Section 2(15) of the Income Tax Act, 1961 defines charitable purpose as including relief of the poor, education, medical relief and the advancement of any other object of public utility not involving the carrying on of any activity for profit.

13. In Tagore Law Lecturers on Endowments, Pandit Pran Nath Saraswati enumerates the charity works recognised by the Hindu law-givers, to include not only such works of public utility as excavation of tanks, wells, etc., but all acts which either conferred some kind of benefit on those who were in need of it or were regarded as meritorious from the spiritual or religious point of view. These are:

- (1) gifts offered outside the sacrificial ground,
- (2) gifts on the occasion of an eclipse, solstice and other special occasions,
- (3) the construction of works for the storage of water like wells, tanks etc.
- (4) the construction of temples for Gods,
- (5) the establishment of procession for the honour of the Gods,
- (6) gift of food, and
- (7) the relief of the sick.

14. Counsel for the Appellants submitted that though the Petitioner is conducting hospital in the buildings in question, some income by way of room rent and other fees collected from the patients for rendering certain services in the hospital are generated and that will render the institution and the purpose of the institution, outside the ambit and scope of being "charitable". It is difficult for us to accept this submission. If the main purpose for which the building is used is for running hospital for the relief of the sick and to achieve this laudable aim some income is generated from the patients admitted in the hospital who can afford to pay, so long as it is not for the purpose of earning any profit, the principal object remains to be a charitable purpose. The question whether the buildings are used principally for a charitable purpose or not has to be decided on the basis of the main object for which the hospital is conducted. This aspect of the matter can be

understood only from the memorandum of articles of association of the Medical Mission. We have already quoted the relevant clauses in the memorandum of articles of association. Those clauses would plainly and clearly indicate that no profit earning is involved in the functioning of the Medical Mission.

15. The Supreme Court in *Commissioner of Income Tax, Madras Vs. Andhra Chamber of Commerce*, interpreting Section 2(15) of the Income Tax Act, held that if the primary object of Andhra Chamber of Commerce was to promote trade, commerce and industry which is an object of general public utility, it would remain charitable even if incidental activity for achieving that purpose was also contemplated. The Supreme Court held that for achieving the main purpose if some income is generated from the activity in question, it has to be considered as expenditure for other dominant or primary object and it will not prevent the Andhra Chamber of Commerce being a valid charity. In *Commissioner of Income Tax v. Cochin Chamber of Commerce and Industry 1972 (84) ITR 83* this Court held that the true meaning of the words "not involving the carrying on any activity for profit" occurring in Section 2(15) of the Income Tax Act is to be understood as 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 which does not involve the carrying in of the activity for profit. The same view has been taken in *Andhra Pradesh State Road Transport Corporation Vs. Commissioner of Income Tax*, also. It is not necessary for making the activity of the institution a charitable one, to exclude any activity connected with the main object generating income which is used for achieving the main object of charitable purpose. The learned Single Judge has referred to the decision in O.P. No. 5256 of 1968. In this decision--*Rev. Mother Frieda Maria Adam v. Executive Officer, Adichanalloor Panchayat*--a Division Bench of this Court, after a careful consideration of all the relevant aspects of the case, accepted the affidavit on behalf of the Petitioner (owner of Holy Cross Hospital, Kottayam) that any income received by charging fees for medical treatment, diet or room rent or other charges made, have been utilised for the purposes of charity and said that eleemosynary element is not essential for a charitable purpose or in regard to the working of the charitable institution.

.1973 16 KLT 348 (*Good Shepherd Hospital Society v. Executive Officer, Vayithiri Panchayat and Ors.*) and in 1974 KLT 289 (*Fr. Paul v. Executive Officer, Kalloorkad Panchayat*), this Court has held that from the mere fact that some fees is collected from patients, a hospital which it otherwise charitable will not cease to be charitable and that the only relevant question is whether the institution is run as a business with a profit making motive. The learned Single Judge also has referred to the decision in O.P. No. 255 of 1974 (*Medical Mission Hospital, Kolencherry v. Executive Officer, Aikaranad*) wherein Chandrasekhara Menon, J. held as follows:

In this case it might be noted that in coming to the conclusion that the payward is liable to assessment for building tax the executive authority has not taken into

account the fact that the hospital run by the Mission is registered under the T.C. Literary, Scientific and Charitable Societies Registration Act. The memorandum of association specifically points out that the hospital run by the mission is a purely charitable institution and the mission is empowered to do all such other things as are incidental, conducive to the attainment of its objects, as a charitable and non-profit making organisation. The articles of Association also specially point out that the mission is not for profit at all. So the presumption has to be applied that the institution concerned is a charitable institution. And as pointed out in the decision cited supra, it is not a necessary element in a charitable purpose that it should provide something for nothing or for less than it costs or for less than the ordinary price. Therefore, in the instant case, in assessing the payward to building tax the relevant factors have not been considered by the Executive Officer.

Considering the principles laid down in the above referred decision and the settled general principle on the question of interpretation of charitable purposes we are of the opinion that the contention that the fact that some amount is collected from patients, who were admitted in the hospital will not in any way afford as sufficient reasons for holding that the building vised for the purpose of running a hospital, which is primarily intended for relief of the sick without any motive for making any profit can be excluded from the beneficial provision contained in Section 3 of the Act. The learned Single Judge, as we said earlier, after an extensive survey of the various aspects of the matter, came to a definite conclusion that the predominant and principal purpose for which the building is used constitutes predominantly for a charitable purpose, and we hold that the finding of the learned Single Judge is amply supported by the documents produced in the case, particularly the balance-sheets which manifest a reflection of the working of the hospital signifying that no profit is earned by the working of the hospital, but the expenses are much more than that of the income derived from collecting some amounts from some of the patients admitted in the hospital. In this view, we have to uphold the decision of the learned Single Judge that the order of the Government impugned in the Original Petition, i.e., Ext. P-11 is unsustainable in law and liable to be quashed. We would like to add that the order Ext. P-11 manifestly show a lack of consideration of any of the relevant aspects of the matter.

17. Counsel for the Appellants now submitted that by the judgment appealed against, the learned Single Judge has not only quashed Ext. P-11, but also declared that the Petitioner in the Original Petition is entitled to exemption from the liability to pay building tax under the Kerala Building Tax Act and that the Appellants have been prohibited from imposing any building tax on the Petitioner for the buildings in question. Counsel submitted that this is an excess exercise of the jurisdiction under Article 226 of the Constitution by the learned Single Judge. It is contended that the learned Single Judge has given an affirmative order declaring that the Petitioner in the Original Petition is not liable to pay building tax and that such a declaration cannot be given when exercising the jurisdiction

under Article 226 of the Constitution.

18. An affirmative declaration that the action taken by the Governmental authorities is ultra vires is an efficient remedy when the court declares that some action, either taken or proposed on merits is unauthorised by law and that should conclude the point as between the suitor and the authority. In spite of the declaration, if an order is made against him, he can ignore it with impunity; if he has been dismissed from an office, he can insist that he still holds it see *Ridge v. Baldwin* (1964) A.C. 40. The principle is that any act of a public authority is liable to be challenged in declaratory proceedings claiming that it is ultra vires and void. Declarations have been granted against unlawful tax demands see *Bowles v. Bank of England* (1913) 1 Ch. 57 and *Dyson v. Attorney-General* (1912) 1 Ch. 159.

19. In *State of Kerala Vs. Kumari T.P. Roshana and Another*, the Supreme Court had occasion to consider the question regarding the jurisdiction of the court to invoke the power of affirmative structuring of redress to make the remedy provided under the constitution for infringement of the rights granted by the constitution more meaningful and really relevant. The court observed that "The root of the grievance and the fruit of the writ are not individual but collective and while the "adversary system" makes the Judge a mere umpire, traditionally speaking, the community orientation of the judicial function, so desirable in the Third World remedial jurisprudence, transforms the Court's power into affirmative structuring of redress so as to make it personally meaningful and socially relevant. Frustration of invalidity is part of the judicial duty; fulfilment of legality is complementary. This principle, of affirmative action is within the jurisdiction of the Supreme Court under Article 136 and Article 32". Again in *Charles K. Skaria and Others Vs. Dr. C. Mathew and Others*, the Supreme Court very plainly said that the court must use its power to correct error and promote order and not strike down an illegal error without going forward to affirmative action which may minimise injury generally. From the wording of Article 226, the High Court, exercising the power under Article 226 has got the mandate of the constitution to strike or remould the right relief to the suitor before the court to render justice in the peculiar circumstances of each case. The power granted to the High Court under Article 226 is definitely wider by its language than the nature of the power of the prerogative writs as understood in England. This is an accepted principle of the content of Article 226 as clearly stated in *Dwarka Nath Vs. Income Tax Officer, Special Circle D-ward, Kanpur and Another*, :

Article 226 is couched in comprehensive phraseology and it ex facie confers a wide power on the High Court to reach injustice wherever it is found. A wide language in describing the nature of the power, the purposes for which and the person or authority against whom it can be exercised was designedly used by the Constitution. The High Court can issue writs in the nature of prerogative writs as understood in England; but the scope of those writs also is widened by the use of the expression "nature", which expression does not equate the writs that can be

issued in India with those in England, but only draws an analogy from them. That apart, High Courts can also issue directions, orders or writs other than the prerogative writs. The High Courts are enabled to mould the reliefs to meet the peculiar and complicated requirements of this country.

In ILR 1982 Ker 74 (C. Murugan and Ors. v. State of Kerala and Ors.), Khalid, J. has observed thus:

Where advice had been made, this Court will unhesitatingly step in to mandate the State to appoint the person included in the list who had been overlooked without adhering to the quota. In appropriate cases, the writ court will be justified in issuing an appropriate direction to the State to report the vacancies available in accordance with quota prescribed, seek the advice of the Commission and make appointments, failure, to do which will be viewed by this Court with disfavour and will persuade this Court to go to the rescue of persons who had been overlooked.

See also ILR 1985 Ker 126--T. Padmanabhan v. FACT Ltd.

20. Before concluding this judgment, we shall, with great respect, recall the words of wisdom that have fallen from Lord Morton of Henryton in the House of Lords decision reported in (1957) A.C 488 (Vine v. National Dock Labour Board):

My Lords, I hope I shall not be thought wanting in respect to the judgments of the majority of the Court of Appeal, with which I have so far agreed, if I say that on this point I find myself entirely in agreement with the judgment of Jenkins, L.J. I am content to adopt, without qualification, everything that he said on the point, and I would only add this. If your Lordships agree with the views which I have stated, the result is that the purported dismissal of the Plaintiff is a nullity. To give him an award of money, as the learned Judge did, for the damage he suffered up to the date of the judgment is only to give him part of the relief which he ought to have. The declaration granted by the learned Judge was properly made, in my view, so as to make it clear to all the world what was the Plaintiff's position in the eyes of the law.

21. The learned Single Judge has of course given a practical and meaningful remedy to the Petitioner. The justification for giving the remedy of a direction to the authorities that the Petitioner should not be compelled to pay building tax for the buildings in question under the Building Tax Act is plainly stated in paragraph 23 of the judgment of the learned Single Judge. The learned Single Judge said that in spite of specific directions from this Court when the Petitioner approached this Court by filing three writ petitions, the 2nd Respondent in the Original Petition did not advert to the relevant evidence placed before it and so under the peculiar circumstances, the learned Single Judge observed that it is only just and proper to consider the question on merits and to take appropriate decision that ought to have been taken by the 2nd Respondent. The learned Single Judge has given a declaration that the buildings of the Petitioner are used principally for charitable purposes and as such exempted from the provisions of the Kerala

Building Tax Act, Act 7 of 1975, u/s 3(1)(b) of the said Act and by declaring so quashed Ext. P-11 order of the Government After giving an affirmative declaration, the learned Single Judge prohibited the 3rd Respondent from assessing or demanding any building tax under the Kerala Building Tax Act, 1975 from the Petitioner--Medical Mission and also given a further direction to refund the amount of Rs. 25.000 deposited by the Petitioner pursuant to the judgment in OP. No. 7106/81 within three months from the date of receipt of a copy of the judgment of the learned Single Judge.

22. We feel that the learned Single Judge has moulded an appropriate and meaningful relief suited to the situation and the peculiar circumstances involved in the case. We do not see any reason to interfere with the discretion exercised by the learned Single Judge and we dismiss the appeal, in the circumstances with no order as to costs.