

(1985) 12 KAR CK 0007
In the Karnataka High Court
Case No : Writ Petition 5381 of 1979

Town Municipal Council

APPELLANT

Vs

Vijaya College

RESPONDENT

Date of Decision : 13-12-1985

Acts Referred:

Karnataka Municipalities Act, 1964 — Section 94

Citation : (1986) ILR (Kar) 2895

Hon'ble Judges : Rajasekhara Murthy, J

Bench : Single Bench

Advocate : H.G. Ramesh, for B.V. Acharya, for the Appellant; Shivashankar Bhat, for R-1, for the Respondent

Final Decision : Dismissed

Judgement

Rajasekhara Murthy, J.—Petitioner is the Town Municipal Council, Mulki. The Order of the Civil Judge and the Sessions Judge, Mangalore (Exts. B and A) are challenged in this Writ Petition.

2. Petitioner-Municipality demanded tax in respect of buildings owned by Vijaya College, Mulki, u/s 124(3) of the Karnataka Municipalities Act, 1964, ("the Act"). This demand was resisted by the respondent-institution before the C.J.M., Dakshina Kannada, Mangalore, in an appeal filed u/s 150 of the Act. It was held in the appeal that the buildings owned by the respondent, which are used for charitable purposes, were entitled to exemption from imposition of property tax.

3. Against the said order, the Town Municipal Council preferred a revision before the Sessions Judge, Mangalore, u/s 150(2) of the Act. The Sessions Judge upheld the order passed by the Chief Judicial Magistrate, and agreed with the reasons given for allowing the appeal and dismissed the revision filed by the Municipal Council.

Being aggrieved by these two orders, the Town Municipal Council has preferred this Writ Petition and has challenged them.

It is vehemently argued by Sri. Ramesh for the petitioner-Municipality that the respondent-Institution is not a charitable institution in the true sense of the term. The institution is run by collecting fees, capitation fee and receives grant from the Government in various forms.

Tax is levied on buildings of the respondent-institution u/s 94 of the Town Municipalities Act. This levy was resisted by the respondent on the ground that the buildings which were being used for charitable purpose, viz., for imparting education, should be exempted from payment of duty.

4. The question that arises in this Writ Petition is :

Whether the Town Municipal Council can levy tax on the buildings of Respondent-1, which is an educational institution ?

5. Sri Shivashankar Bhat, Learned Counsel for the first respondent, in addition to the reasons given by the two Courts below, has raised a contention that the Town Municipality is not competent to levy any tax on buildings which are exclusively used for charitable purposes and in this case, education. He derives support from the judgment of this Court in Baldwin Girls' High School, Bangalore and etc. Vs. Corporation of the City of Bangalore,

6. It was held by this Court that the object of Section 101 of the Corporation Act (Act No. 69 of 1949) was to grant exemption from payment of property tax on certain buildings and lands and Sub-Clauses(e-1) and (e-2) were added by amendment Act 3 of 1969. The said Sub-clauses are reproduced here in :

"(e-1) buildings or lands exclusively used for student hostel which are not established or conducted for profit ;

(e-2) buildings or lands exclusively used for educational purposes by educational institutions receiving grant-in-aid from the Government;"

Therefore, the discrimination made under the impugned provision, while granting exemption from payment of tax between grant-in-aid institutions and other private educational institutions, was held to be violative of Article 14 of the Constitution.

Though no such provision is incorporated in the Town Municipality Act, it is contended on behalf of the respondent that the legal position cannot be different and the levy of tax on its buildings by the Mulki Municipality should be struck down for the same reasons.

7. That education is a charitable purpose, is well settled by the several decisions of the Supreme Court starting from the case of Rev. Sidhajibhai Sabhai and Others Vs. State of Bombay and Another, The Supreme Court observed while interpreting Article 26 of the Constitution, in a larger sense an educational institution may be regarded as charitable. The Court was interpreting Article 26 vis-a-vis the right to interfere by a Government in the management of a private educational institution. Under Article 26, freedom to establish and maintain

institutions for religious and charitable purposes is conferred on every religious denomination or any section thereof, while dealing with the scope of Article 26, the Supreme Court held, that imparting education may be regarded as charitable.

8. The next decision relied upon by Sri Shivashankar Bhat is the one reported in *The Sole Trustee, Lok Shikshana Trust Vs. The Commissioner of Income Tax, Mysore*, .

9. The Supreme Court was dealing with the interpretation of "education" occurring in Section 2(15) of the Income Tax Act, 1961. Under that definition, "charitable purpose" includes, relief to the poor, education, medical relief and the advancement of any other general public utility not involving the carrying of any activity.

10. Their Lordships held, that the term, "education" as used in Section 2(15) of the Act has a wider and more comprehensive meaning than education through educational institutions, such as, universities, whose income is exempted from income tax, u/s 10 of the Act. The questions that arose in that case was: whether the appellant-trust was entitled to exemption? The sole Trustee, the appellant" before the Supreme Court, had claimed that the publication of a newspaper cannot be treated as solely an activity for profit, but the publication of news and the dissemination of the information should be construed as predominantly for educational purpose in its ordinary and usual sense.

11. While rejecting the contention of the appellants the Supreme Court held, that there is an element of charity in the first three purposes referred in Section 2(15) of the Act, but to qualify for the exemption under the last and the widest category of objects of public utility, inquiry is necessary to find out the nature of activities considered and whether they are truly charitable in nature.

On the facts of that case the Court held, that the Trust was not entitled to seek shelter under the definition of charitable purpose in Section 2(15).

The next decision of the Supreme Court referred by Sri Shivashankar Bhat is :

Additional Commissioner of Income Tax, Gujarat Vs. Surat Art Silk Cloth Manufacturers Association, .

The Supreme Court was interpreting the last category of charitable purpose, viz., the advancement of any other object of general public utility not involving the carrying of any activity for profit.

12. Though, we are not directly concerned in this case about the interpretation of Section 2(15) of the Income Tax Act, the enunciation of the Supreme Court while approving the decision of this Court in *The Commissioner of Income Tax -v.- The Sole Trustee Lokashikshana Trust, Hubli* AIR 1970 Mys 285 is only relevant for our purpose. It was laid down by this Court by Justice Sri Govinda Bhat (as he then was) that the first three heads of charitable purposes, viz., relief of the poor, education and medical relief, the Court will assume it to be for the benefit

of the Community and charitable unless the contrary is shown.

13. Therefore, the important aspect with which we are concerned in this case is :

Whether the buildings which are exclusively used by the Respondent-institution for education could be subjected to building tax u/s 94 of the Town Municipalize Act ?

14. In the light of the above discussion and the enunciation of law, which is well settled, the levy of property tax by the Town Municipal Council, Mulki, on the buildings belonging to the Respondent-institution should be struck down. It is ordered accordingly and the Writ Petition is dismissed.