

(1990) 08 KAR CK 0016
In the Karnataka High Court
Case No : W.A. No. 248 of 1986

Town Municipal Council

APPELLANT

Vs

Vijaya College

RESPONDENT

Date of Decision : 01-08-1990

Acts Referred:

Karnataka Municipalities Act, 1964 — Section 94 (1) (a) (iv)

Citation : (1990) ILR (Kar) 2952 : (1990) 2 KarLJ 339

Hon'ble Judges : K. Jagannatha Shetty, J;B.P. Singh, J

Bench : Division Bench

Advocate : G.S. Visveswara, for the Appellant; K.R.D. Karanth and G.B. Chandra Gowda for R-1, for the Respondent

Final Decision : Dismissed

Judgement

B.P. Singh, J.—This appeal by the Town Municipal Council, Mulky, is directed against the order of the learned Single Judge of this Court dated 13-12-1985 in Writ Petition No. 5331/1979 dismissing the Writ Petition preferred by the appellant Council. The learned Single Judge upheld the order passed by the Appellate Authority as well as the revisional Authority under the Karnataka Municipalities Act, 1964 holding that the building owned by the Vijaya College Trust, wherein respondent No. 1 Vijaya College was being run for the purpose of imparting education was exempt from payment of property tax being a charitable institution.

2. We may briefly notice the facts of the case which are not in dispute.

Vijaya College, Mulky, is run by the Vijaya College Trust, a public trust. The building in which education is imparted belongs to the Trust and the Trust does not charge any rent or other charges from the College for the use and occupation of the building. The College receives grant-in-aid from the Government. The College also charges from the students tuition fee at the rates approved by the Government as a condition of the grant made to it from time to time. The College

is run subject to the conditions imposed by the Government from time to time as a condition for giving to it grant-in-aid. The College, as a condition for the grant, must be recognised by the Government, must adhere to the curriculum prescribed and must not charge more than the prescribed fee. It is common knowledge that grant-in-aid is given to institutions which fulfil all the conditions laid down by the Government as an aid to the institution for payment of salaries to its employees, maintenance of its buildings and such other things incidental to the running of an educational institution. This College is one such institution.

3. For the assessment year 1974-75, a notice was issued u/s 106 of the Karnataka Municipalities Act (hereinafter referred to as the Act) proposing to levy building tax in respect of the building in question. The College-Respondent No. 1 raised objections. The Assessing Authority rejected those objections. The College then filed an appeal before the Assistant Commissioner. The Appellate Authority also rejected the appeal. Consequently, a demand for property tax was raised under the Act and the demand notice was issued on 17-11-1977.

4. Section 150 of the Act provides for an appeal to the Divisional Magistrate against such a notice of demand. Pursuant thereto, Respondent No. 1 preferred an appeal to the Judicial Magistrate and the same came to be disposed of by the Chief Judicial Magistrate, Mangalore, by the order dated 18-3-1978 (Annexure-B). It was held by the Chief Judicial Magistrate that the building was being used for a charitable purpose viz., for the purpose of imparting education. He therefore held that it was entitled to exemption from payment of property tax under proviso (iv) to Section 94(1)(a) of the Act, which provided that no tax shall be leviable in respect of any building or part of a building used as a place of public worship or used for a charitable purpose, without the express approval of the Government.

5. The appellant preferred a revision against the order of the Chief Judicial Magistrate and the aforesaid revision was disposed of by an order dated 28-12-1978 by the Additional Sessions Judge, Mangalore. The Additional Sessions Judge, agreeing with the conclusions reached by the Chief Judicial Magistrate dismissed the Revision Petition. The applicant thereafter preferred Writ Petition No. 5381/1979. That Writ Petition has been dismissed by the learned Single Judge, as earlier observed.

6. The learned Counsel appearing on behalf of the appellant submitted that u/s 94(1)(a)(iv) of the Act, a building or any part of a building used for a charitable purpose is certainly exempt from the payment of property Tax. He also did not dispute before us that a building where education is imparted is a building used for charitable purpose. Having regard to the settled position in law, he fairly did not challenge this proposition. He however went on to urge that having regard to the changed circumstances as they exist to-day, where education is imparted as a matter of trade or business, that is to say, on commercial lines to gain sums profit for those who run the institution, such institution cannot claim exemption from payment of building tax in respect of the building where such education is

imparted. He rightly relied upon Explanation (ii)(a) of Section 94(1) which provides that buildings or portions thereof in which any trade or business is carried on shall not be deemed to be used as a place of public worship or for a charitable purpose within the meaning of Clause (iv) of proviso (a). Mr. Karanth, learned Counsel appearing on behalf of the respondent submitted that as a proposition of law he takes no exception to the submission urged on behalf of the appellant. He however submitted that in the instant case, it was never the case of the appellant that the College was being run on commercial lines with a view to making a profit either for the Trust or for any other parson.

7. The learned Counsel for the appellant submitted that the College receives grant-in-aid from the Government. He submitted that such grant-in-aid is granted by the Government taking into account the probable rental that such building may earn and the cost of its maintenance. He therefore submitted that having regard to this fact, it should be held that the college was earning rent for the building and therefore not entitled to claim exemption because of Explanation (ii)(b) of Section 94(1). Such a submission was also advanced before the Revisional Authority which rejected the submission, and in our view rightly. We may observe that there is no factual foundation for the submission urged. Assuming that in the matter of determining the quantum of grant to be made to an institution, the Government takes into account the probable rental of the building and the cost of its maintenance, it cannot be held that the grant made is by way of rent. The probable rental may at best be relevant for determining the quantum of the grant, but the grant can never be construed as rent paid by the Government to the College. Moreover, if that were so, it ought to be held logically that it was really the Government which was the tenant of the building in question. In such event, in view of the proviso (a)(i) of Section 94(1) of the Act, no building tax should be levied, it being a building used for the purposes of Government. We are therefore, not in a position to hold that merely because grant-in-aid is available to an educational institution, it ceases to be a charitable institution. In this connection, we may refer to a decision of this Court reported in *Baldwin Girls' High School, Bangalore and etc. Vs. Corporation of the City of Bangalore*, In that case, the Court was concerned with the City of Bangalore Municipal Corporation Act (69 of 1949) as amended by Act 10/1964 and Act 3 of 1969 wherein there was an exemption from payment of property tax in respect of buildings used for educational purpose. But a further distinction was sought to be made between the institutions receiving grant-in-aid and those not receiving grant-in-aid. This Court held that such a classification had no nexus with the object sought to be achieved by the law granting the exemption. It was observed:

"15. The next question for consideration whether the classification had any nexus with the objects sought to be achieved by the law granting the exemption. The object of granting exemption from payment of property tax on buildings, as the provision indicates is in respect of buildings wholly used for educational purpose. Thus the public purpose for which the building is utilised or in other words, the public utility of the building by its exclusive user for running an educational

institution is the dominant aspect for giving the exemption. This is for the reason, as pointed out earlier, the imparting of education to the citizens is an obligatory and primary duty of the State and a part of this obligation is discharged by recognised educational institutions. From this point of view, all recognised educational institutions stand in the same position, and there is no difference at all.

17. The learned Single Judge has referred to the exemption from payment of fees or lower rate of fees charged by the grant-in-aid institution and the higher rate of fee charged by appellant-institutions to the pupils and has observed that grant-in-aid institutions are required not to collect the fees or to charge lower rate of fee i.e., at the rate prescribed by the Government and the appellant-institutions charge higher fee.

18. We find it difficult to agree that the above difference has any nexus to the grant of exemption from payment or property tax. In this behalf, it is necessary to point out, that the entire salary of teachers and other members on the establishment of grant-in-aid institutions are paid by the State, but the institutions which do not receive such grant, would have to meet the establishment charged from the fees received from the pupils. There can be no doubt, that if the appellant-institutions have been charging exorbitant rate of fees, and were making profit out of the amount so received that would constitute a sound basis for not granting of exemption from payment of property tax to them and granting exemption to grant-in-aid institutions. On this aspect of the matter, the undisputed position is that for over 16 years, the Corporation had exempted the appellant institutions from payment of property tax on the ground that the institutions were run on philanthropic basis and were not making any profit."

8. It was then submitted by Counsel for the appellant that the institution was making profits and therefore it was not entitled to the exemption from payment of building tax. The argument proceeds on the basis that once it is found that an institution imparting education is run on commercial lines for the purpose of generating profits, it cannot claim to be a charitable Institution. This, it was submitted, is also the import of Explanation (ii)(a) of Section 94(1) of the Act, because it excludes from the benefit of exemption buildings or portions thereof in which any trade or business is carried on. We generally agree with the Counsel for the appellant that if in a case it is shown that though education is imparted in a building, the College is run on commercial lines with a view to earning profits, it may not qualify itself as a charitable institution. In the context of the Act with which we are concerned, it may not be possible to give to the words "trade or business" the same meaning as may be given to those words under legislations such as Industrial Disputes Act or Shops and Establishments Act promulgated by States, which seek to regulate employer-employee relationship. The grant of exemption under the Act is based on different considerations and those words must be given contextual meaning having regard to the purpose which such

exemption seeks to achieve.

9. However, the difficulty that confronts the appellant is insurmountable, and that arises from the fact that no such plea was raised before the authorities under the Act or even before the learned Single Judge. As to whether a trade or business is being carried on in the building in question, and as to whether the educational institution is being run on commercial lines with a profit motive, are questions of fact which cannot be decided in a Writ Petition and that too in the absence of any such plea and the factual foundation to support the plea. The learned Counsel for the appellant failed to satisfy us that such a plea was ever raised before the authorities, nor does it appear to have been raised even before this Court in this appeal. The submission that the institution was not a charitable institution is based solely upon the fact that it gets grant-in-aid from the Government and realises tuition fee from its students at the prescribed rate and that by doing so, a profit must be generated. That the institution was run on commercial lines for private gain or profit, was not the case set up against the respondents, nor was such a plea ever raised. If such a plea had been raised by the appellant at any stage, the respondents would have been called upon to produce all the evidence that may be in their possession to satisfy the authorities that such was not the position. Such a plea was never raised and therefore we do not wish to entertain such a plea at this stage as it would involve going into questions of fact even in the absence of any such plea, and complete absence of any material on record on this factual aspect of the controversy. We may however observe that even where by reason of such grant-in-aid or realisation of tuition fee a surplus is left after meeting all obligations, that by itself may not be conclusive for holding that the institution is not a charitable institution, and that it is being run on commercial lines with a view to generating profits. It will all depend on the facts of the case, and in an appropriate case where relevant material is available this question may be gone into.

10. In this view of the matter, we find no reason to interfere with the finding of the learned Single Judge as also the orders passed by the authorities under the Act concurrently holding that the building in question is being used for a charitable purpose. This appeal is therefore dismissed.

There will be no order as to costs.