
(2010) 12 KL CK 0044

In the High Court Of Kerala

Case No : W.A. No's. 1648 and 2495 of 2009

Unity Hospital Pvt. Ltd.

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 21-12-2010

Acts Referred:

Kerala Building Tax Act, 1975 — Section 3, 3(1)
Kerala Municipalities Act, 1960 — Section 235

Citation : (2011) 1 ILR (Ker) 19

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

Bench : Full Bench

Advocate : Santheep Ankarath and G. Siji, for the Appellant; Vinod Chandra, Special Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

C.N. Ramachandran Nair, J.—These two Writ Appeals were referred to the Full Bench by a Division Bench doubting the correctness of another Division Bench judgment in Josegiri Hospital v. Government of Kerala, reported in 2008 (3) KLT 627 .

2. The question raised is whether hostel building of an educational institution is entitled for exemption from building tax u/s 3(1)(b) of the Kerala Building Tax Act, 1975 (hereinafter referred to as the Act for short), which provides for building tax exemption for buildings used for "educational purposes".

3. While the building involved in Writ Appeal No. 1648/2009 is a hostel building owned by a nursing school, the building involved in Writ Appeal No. 2495/2009 is a hostel building attached to a Residential Higher Secondary School owned by a private management.

4. We have heard learned Counsel appearing for both the Appellants and have also heard learned Government Pleader appearing for the Respondents.

5. The provision of the Act, which requires consideration with reference to the

facts of these cases, is Section 3, which is extracted hereunder:

3. Exemptions.--(1) Nothing in this Act shall apply to--

(a) buildings owned by the Government of Kerala or the Government of India or any local authority; and

(b) buildings used principally for religious, charitable Or educational purposes or as factories or workshops.

Explanation.--for the purposes of this Sub-section, "charitable purpose" includes relief of the poor and free medical relief.

6. The short question that arises for consideration is whether "educational purposes" referred to in the above Section has only a restricted meaning covering buildings, where students are imparted education; or whether it has a wider meaning covering hostel buildings owned by educational institutions to provide accommodation to students in the premises of the educational institutions. The Division Bench of this Court in the above referred judgment held that "educational purposes" cover only purposes which have integral, immediate and proximate connection to education. In the reference order, another Division Bench of which one of us is a member [CNR(J)], took the view that the above test laid down by the other Division Bench in the earlier judgment is satisfied at least in respect of hostels run by nursing schools and medical educational institutions and probably mistake is there only in the conclusion drawn in that judgment. What we notice is that the Division Bench while deciding the matter did not consider the educational Regulations of the Medical Council of India and Nursing Council of India, which make it mandatory that in order to get approval for a medical college or a nursing college, hospital for patients and hostel facilities for students are mandatory. The State also does not controvert this position and in fact all the medical colleges and nursing colleges run in the State including those run by the Government have hospitals of their own or attached hospitals, and have hostels providing accommodation to all students. Except probably few students who hail from the areas very close to the colleges, all the nursing and medical students reside in the hostels attached to their colleges. The students of both medical and nursing colleges require clinical training in hospitals, and students in senior classes are deployed on a turn basis in hospitals. Unless accommodation is provided to the students in the college campus or nearby, it would not be possible for them, particularly for girls, to reach the hospitals attached to the medical and nursing colleges for duty at odd hours in the night. Therefore, the Medical Council of India and Nursing Council of India have made it mandatory for every medical college and nursing college to have hostel facilities, and without such facility no medical or nursing college will get approval from the Medical Council or Nursing Council of India, and only on their approval, the medical educational institution can get affiliation to the University. So much so, in our view, the test laid down by the Division Bench i.e. integral, immediate and proximate connection of the hostel building with

education, is squarely satisfied in the cases of hostels attached to nursing schools and other medical educational institutions which require compulsory hostel facility for students for their approval. We, therefore, hold that wherever hostel is compulsory for approval of a course study or an educational institution by the regulatory body as in the case of medical and nursing colleges, hostel building is an integral part of the educational institution, and so much so, accommodation to students provided in the hostel building is for educational purpose and therefore the hostel building qualifies for exemption from building tax. In view of the above finding, we are unable to agree with the conclusion drawn by the Division Bench i.e. denial of exemption to hostel building attached to the nursing school.

7. The next question to be considered is whether hostel facility to students provided by other educational institutions, which are not compulsorily required under the educational regulations to provide accommodation to students, is an educational purpose qualifying the hostel buildings for tax exemption. In this context, we have to necessarily consider the object and scope of the exemption clause provided in the statute. While learned Counsel for the Appellants have relied on Section 235 of the Kerala Municipalities Act, which provides for exemption to buildings used for educational purposes including hostel buildings owned by the same educational institutions, learned Government Pleader has relied on the decision of the Supreme Court in *Municipal Corporation of Delhi Vs. Children Book Trust*, where the Supreme Court held that school buildings are not entitled to exemption from municipal tax under the Delhi Municipal Corporation Act. On going through the judgment of the Supreme Court, we notice that the provision for exemption from property tax under the Delhi Municipal Corporation Act is not similar to the provisions of the Kerala Building Tax Act, and so much so, in our view, the decision cannot be applied while deciding the claim of exemption made by the Appellants in these cases. Even though Section 235 of the Kerala Municipalities Act specifically provides for property tax exemption for hostel buildings owned by the very same educational institutions, there is no specific exemption for hostel buildings in Section 3(1)(b) of the Kerala Building Tax Act. Therefore, we have to examine whether "educational purposes" referred to in Section 3(1)(b) has only restricted meaning or it has a wider meaning covering all buildings directly or indirectly catering to the needs of student community. In this context, we have to necessarily consider the general pattern of hostel facility provided by education institutions in the State. In the recent past, large number of educational institutions, particularly engineering colleges are established all over Kerala including remote areas and hill stations, where the students admitted are not from local area and they have to necessarily depend on hostel facility to be provided by the educational institution. In fact admissions to medical and engineering colleges are given on central allotment basis and hardly any student can get admission in a college near to his/her house. Therefore, necessarily, the students have to depend on hostel accommodation to pursue their studies. Colleges will not get students if

they do not provide hostel accommodation to students near to the College. Therefore, hostel buildings are constructed by educational institutions to attract students to their institutions. Many educational institutions provide only basic facilities like building, electricity and water connections for hostels and in fact, students are running mess on sharing basis. So much so, the State's contention that hostels attached to educational institutions are commercial ventures intended to make profit, in our view, is unacceptable. In order to consider whether hostel provided by an educational institution is for educational purpose or not, we have to consider the consequences if such educational institution does not have hostel facility to provide accommodation to its students. Obviously, such educational institutions have to source students locally, which may be possible only in the case of Schools. In fact, thousands of schools and colleges in the State do not have hostel facility because they depend on students from the local area only. However, wherever an educational institution has students from different parts of the State, and Non Resident Indians sending their children for studies in Kerala, necessarily the educational institution has to provide hostel facility to the students. In fact, without hostel facility, many educational institutions will not have required number of students to run it. We, therefore, feel accommodation is a necessary facility, which an educational institution is required to provide to it's students; and so long as the purpose of stay of students in the hostel is to study in the educational institution, the purpose of such building, which is used for accommodation of students, qualifies as educational purpose.

8. Learned Government Pleader raised the contention that educational institutions, which are running hostels, are charging fees from students, and so long as fees is charged, accommodation provided to students in the hostel is for commercial purpose and such buildings do not qualify for exemption. According to him, if hostel accommodation is provided to students in the hostel building free of cost, probably the building qualifies for exemption under the head "charitable purpose". Under Clause (b) of Section 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 Section 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. However, the other buildings which qualify for exemption with reference to the purposes referred to in Clause (b) of Section 3(1) do not involve any free supply or service. So far as factories

and workshops are concerned, those are engaged in production of goods, servicing etc. These are obviously commercial activities supposed to make profit. The legislature, however, has chosen to grant exemption to factory and workshop buildings and the purpose is obviously to promote industrialisation, goods production, generation of employment etc. So much so, Section 3(1)(b) of the Act does not limit exemption to buildings, where services are rendered free. In fact, education is a separate head and there is nothing to indicate that in order to claim exemption for a building used for educational purpose, education should be rendered free. Though education is not a business, it involves collection of reasonable tuition fees as well as hostel charges, where accommodation is provided. Of course, when education is rendered by way of charity, it has to be free, and so much so, charitable institution can run free educational institutions and such buildings would be exempted both under the heads "charity" as well as "education". However since exemption is available for all buildings used for educational purposes, exemption would be available even if charges are levied from students for coaching as well as for hostel facilities. So much so, we hold that charging of fees from students for providing accommodation in hostels does not stand in the way of educational institutions claiming exemption for the hostel buildings. This Court has held that even parallel colleges or tutorial colleges imparting education to students on payment basis, also qualify for exemption for the buildings owned and used for such purposes by the educational institutions.

9. We are therefore of the view that buildings owned by educational institutions for providing hostel accommodation to students qualify for building tax exemption under Clause (b) of Section 3(1) of the Act. However all buildings accommodating students do not qualify for building tax exemption because there are so many lodge buildings constructed by various people around educational institutions which do not have hostel facility, to rent out to students in such educational institutions. Letting out of buildings by private agencies is a commercial activity whether tenants are students or not. In other words, only hostel buildings owned by educational institutions for accommodating it's own students in such hostels will qualify for exemption under Clause (b) of Section 3(1) the Act.

10. In view of the above findings, we allow the writ appeals by vacating the judgments of the learned Single Judge and by vacating the assessments declining exemption and demanding building tax for the hostel buildings owned by the Appellants, where students are provided accommodation.

Before parting of the matter, we feel one Clarification is required to be made in this judgment because it so happens that in hostels there may be a few teachers of the educational institution accommodated either to function as warden or supervisory staff or otherwise, as employees of the educational institution. However, in our view, the same will not disentitle the building for exemption if the main purpose of the building is to accommodate students because what is required for exemption under Clause (b) of Section 3(1) of the Act is that the

principal use of the building should be for educational" purpose.