(2000) 07 AHC CK 0049

In the Allahabad High Court

Case No : C.M.W.P. No. 90 of 1999

Uttam Charitable Trust, Ghaziabad and another — APPELLANT

Vs

State of U.P. and another — RESPONDENT

Date of Decision : 18-07-2000

Acts Referred:

Uttar Pradesh Municipal Corporation (Amendment) Act, 1999 — Section 4
Uttar Pradesh Nagar Mahapalika Act, 1959 — Section 173, 175, 177

Citation : (2000) 4 AWC 2692 : (2000) 3 UPLBEC 2272

Hon'ble Judges : M. Katju, J;A.K. Yog, J

Bench : Division Bench

Advocate : Vikram Nath, for the Appellant;

Judgement

M. Katju and A. K. Yog, JJ.—The petitioner is a Public Charitable Trust as stated in paragraph 3 of the writ petition and it established a school in Ghaziabad in the State of U. P. known as Uttam School for girls.

2. u/s 173 of the U. P. Nagar Mahapalika Adhiniyam, 1959, provision is made for levying the property taxes like general tax, water tax, drainage tax, conservancy tax.

3. Section 175 of the Act provides for exemptions to the main provision extending benefit of exemption from general tax on certain buildings. Section 177 of the Act provides that general tax shall be levied in respect of all buildings and lands in the city except :

"(a) buildings and lands solely used for purposes connected with the disposal of the dead :

(b) buildings and lands or portions thereof solely occupied and used for public worship or for a charitable purpose ;

(c) buildings solely used as jails, court houses, treasuries, schools and colleges."

4. The Government vide order dated 22.7.1998 (Annexure-1 to the writ petition

without amending the Act, attempted to explain the object of exemption to the schools and colleges and provided that the institutions which are giving education on commercial basis could not be given benefit of exemption of tax. Feeling aggrieved, the petitioner filed this petition on 12.2.1999.

5. Counter-affidavit has been filed on behalf of Nagar Nigam respondent Nos. 2 and 3. No counter-affidavit has been filed on behalf of the State of U. P./ respondent No. 1.

6. The respondent Nigam has placed reliance upon the subsequent amendment of Section 177 of the Act vide U. P. Extraordinary Gazette dated 26.3.1999. Section 177 of the Act is amended vide Section 4 of the Amending Act of U. P. Municipal Corporation (Amendment) Act, 1999.

7. The amended clause (c) of Section 177 of the Act reads :

"building solely used as jails, court houses, treasuries and schools and colleges other than such professional, vocational, technical and medical institutions as are not run and managed by the Government."

8. Heard learned counsel for the petitioner and learned counsel for the respondents.

9. A perusal of the amended clause (c) leaves no doubt that Legislature did not agree with the view expressed in the Government Order dated 22.7.1998 (Annexure-1 to the writ petition) and hence the section itself was amended making it clear that the schools and colleges shall be exempt from general tax and that only such professional, vocational, technical and medical institutions as are not run and managed by the Government shall become liable for making payment of general tax.

10. Learned counsel for the petitioner also submitted that by the Government order tax liability could not be imposed by issuing Government order dated 22.7.1998. The argument has substance and it is accordingly accepted.

11. In view of the unambiguous provision of Section 177 of the Act as well as amended clause (c) of the said section referred to above, we are of the opinion that no general tax could be imposed upon the college of the petitioner which is admittedly neither professional nor vocational institution.

12. In view of the above, the Government order dated 22.7.1998 Annexure-1 to the writ petition is quashed. We further issue a writ of mandamus directing the respondents to refund the amount, if any, deposited as general tax u/s 177 of the Act within two months of production of a certified copy of this order in accordance with law.

13. The petition stands allowed. No order as to costs.

