(2000) 04 GUJ CK 0079

In the Gujarat High Court

Case No : Special Civil Application No''s. 4981 and 4984 of 1998

Xavier Kelavani Mandal APPELLANT

Vs

State of Gujarat and Another RESPONDENT

Date of Decision : 20-04-2000

Acts Referred:

Bombay Provincial Municipal Corporations Act, 1949 — Section 132
Gujarat Education Cess Act, 1962 — Section 12, 13

Citation : AIR 2000 Guj 236 : (2000) 4 GLR 82

Hon'ble Judges : Kundan Singh, J

Bench : Single Bench

Advocate : B.R. Gupta, for the Appellant; S.S. Patel, A.G.P. (for No. 1) and Maulin R. Raval, (for No. 2), for the Respondent

Final Decision : Dismissed

Judgement

Kundan Singh, J.—In both these petitions, common question has been raised by different petitioners against the action of the respondents in denying exemption from payment of education cess and general taxes to the petitioners-Trust and with a prayer to hold that the impugned action of the respondents is contrary to law, and violative of Article 14 of the Constitution of India.

2. The petitioners in both the petitions are Public Trusts registered under Bombay Public Trusts Act, 1950 (hereinafter referred to as the "Act") registered with the Charity Commissioner, Ahmedabad region, Ahmedabad. The main objects of the petitioner-Ahmedabad Jesuits School Society Trust are as under :

(a) To take over the management of all existing Jesuits Schools, namely (i) St. Xaviers'' High School at Ahmedabad (ii) St. Xaviers'' High School at Anand, Dist. Kheda (iii) St. Xaviers'' Night School at Ahmedabad, or any school or colleges, which shall hereinafter be established by the Gujarat Jesuits Province, etc.

The main object of Xt. Xaviers Kelavani Mandal Trust as set out in its memo of Association are as under :

(a) To acquire and take over of all or any part of the movable and immovable properties vested in the Superior of the Ahmedabad Jesuits Mission or vested in any other person or persons or body and used or devoted to or for any purpose of the Roman Catholic Religion or any educational or charitable institution or other purpose whatsoever in connection therewith.

(b) To provide and/or administer colleges, schools, hostels, churches, chaapals, used orphanages. Penitentiaries, Co-operative Societies, banks, agricultural or industrial settlements or Associations, poor homes, missions, Founding rooms and Nurseries Institutions, Laboratories, Reading guilds, confratermity, sodalities, hospitals, clubs, gymkhanas. Retreat houses, dispensaries, social centres and other educational, charitable, social and religious institutions in India.

(c) To take over the effects and liabilities of existing religious, charitable or educational institutions, whose objects are similar to the objects of the Trust etc.

3. The petitioner-Trust the Ahmedabad Jesuits School Society owns and runs St. Xaviers'' High School and Laboratory and a Kinder Garten School at Mirzapur area of Ahmedabad city. In the assessment records of the respondent No. 2-Corporation, the said property is comprised in Shahpur 2-C zone/Ward and bears Census Nos. 9002 and 9009/3, survey/final plot Nos. 06543 to 6545 + 6561 + 6703 and 06561/6 and tenement No. 2164-0016-00-0101-T-2164-0016-00-0119-A, while the petitioner-Xavier Kelavani Mandal owns and runs St. Xaviers Primary School in Mirzapur area, Ahmedabad in the property comprised in Shahpur 2-C Zone/Ward bearing Census No. 901/1, Survey No./ Final plot Nos. 06543 to 6567,6703 and tenement No. 2164-0020-00-0001-Q. Section 3 of the Gujarat Education Cess Act provides that for the cause of promoting education in the State there shall be levied and collected in accordance with the provisions of the Act, Education Cess which shall consist of a surcharge on all land except lands which are included within the village site and not assessed to land revenue. Section 12 of the said Act provides for levy and collection with effect from 1st day of April, 1970, a tax on land and buildings situated in the urban areas at the rates mentioned therein, and used for the purpose of trade, commerce, industry etc. on the basis of the annual letting value to be determined under the Bombay Provincial Municipal Corporations Act, 1949. Section 13 provides the exemption from levying and collection of education cess on certain lands and buildings mentioned therein. u/s 13(3), the State Government has been empowered, if it considers it necessary to do so in the public interest, exempt from payment of the tax u/s 12 of the Act on any building or land or any class of building or land by issuance of Notification in the official gazette to that effect. In accordance with the provisions of the Cess Act, the respondent No. 1 Government issued through its Finance Department, a notification dated 24-12-1963 exempting from payment of tax u/s 12 of the Act, the class of lands and buildings as specified therein.

4. The contention of the petitioners-Trust is that the Trusts are legally entitled for exemption from payment of education cess leviable u/s 12 of the Cess Act in so

far as payment of general tax on any building or land or portion thereof solely occupied and used for public worship or for a public charitable purpose. As the petitioners are registered under Bombay Public Trusts Act, hence they are entitled for exemption from payment of general tax u/s 132 of that Act. The petitioners made a representation to the respondent-Corporation seeking for exemption from payment of education cess u/s 12 of the Gujarat Education Cess Act, 1962 and general tax u/s 132 of the BPMC Act, 1949 on the ground that they are charitable trusts and are entitled for exemption. The petitioners lastly sent a representation to the respondents-Collector of Ahmedabad and Controller of Municipalities, Ahmedabad seeking exemption from the payment of education cess and general taxes in respect of the petitioners. The respondent informed the petitioners by its letter dated 6-4-1998 that the petitioners'' request for exemption from the payment of Municipal tax cannot be granted and called upon them to pay arrears of taxes. The petitioners again made a representation to the respondent No. 1 wherein it was mentioned that similarly situated educational institutions have been granted exemption from the payment of education cess and general taxes and requested for equal treatment to the petitioner Trusts also. The respondents attitude, conduct and action are contrary to the relevant statutory provisions under Sections 12 and 13 of the Gujarat Education Cess Act and Section 132 of the BPMC Act, 1949 and the action of the respondents are arbitrary, discriminatory, illegal and contrary to the mandate of Article 14 of the Constitution of India.

5. Affidavit-in-reply has been filed on behalf of the respondent No. 2 wherein it has been asserted that the petitions are not maintainable. It is further stated that it has been held by the Division Bench of this Court that the question whether the petitioner is entitled to the benefit of provisions of Section 132 of the BPMC Act, 1949 is one which should have been decided by the Small Causes Court and that favourable decision has not been obtained from the competent Court. Thus, the petitioners arc not entitled to raise the said question by way of a writ petition directly before this Court. The petitioners ought to have initiated appropriate proceedings before Small Cause Court and thereafter only, order of the Small Cause Court could have been challenged in this Court by way of a petition. Hence, these petitions are required to be dismissed. It is also asserted that the petitioners'' property is not being used solely for public charitable purpose and the school is being run with a view to make profit and hence that activities carried on are in the nature of trade or business. The property is not owned by the petitioners, but it is owned by the Trusts, hence, the petitioners are not entitled to exemption from taxes. Some part of the property has been let out and being used by the school in the said premises and that is not used for the purpose of charity. The school or institution run in the said premises does not fall within the meaning of Section 132 of BPMC Act wherein the place and land or portion thereof solely occupied and used for public worship or for a public charitable purpose can be exempted. According to the provisions of the Act, the plots and lands or portion thereof shall not be deemed to be solely occupied and

used for public worship or for public charitable purpose within the meaning of Clause (b) of Section 1. If the building or land or portion thereof in which any trade or business is carried on and the building or land or portion thereof in respect of which the rent is derived, whether such rent is or is not applied solely to religious or charitable purposes. It is further stated that where any portion of any building or land is exempted from the general tax by reason of its being solely occupied and used for public worship or for a public charitable purpose, such portion shall be deemed to be a separate property for the purpose of Municipal taxation. The petitioners have not placed any material on record to show that their property is solely used for any charitable purpose. On the other hand, any land or building by use of which if any income or profit is derived, then it cannot be said to be solely used for charitable purpose. The petitioners are deriving income and profit. Hence, they are not entitled for any exemption. The examples of similarly situated institutions given by the petitioners are not actually similarly situated to the petitioners. Hence, there is no equality as alleged. A bald statement by the petitioners that they are carrying on charitable activities without being supported by any evidence whatsoever is not sustainable. The petitioners and their institutions are having huge income and have been holding fixed deposits in banks and are earning interest and other incomes from other heads including fees for admission, tuition fees, term fees etc. The petitioners are also having huge amount of money in different accounts in different banks. These institutions are earning and making profits from extra fees, rent from the contract given for canteen, bank interest, admission fees and miscellaneous income etc. the total of such profit/income derived by the management comes to Rs. 3,20,238/- for the year ended on 31st March, 1994. The management is deriving amounts transferred to it from the said institutions. Thus, the petitioners are earning profit from the premises in question. Therefore, they are not entitled to any exemption. The petitioner-Trusts are not doing solely charitable activities. They are running schools, colleges, computer centres, canteens, secretarial classes etc. for which they are charging very high fees and are deriving other incomes from such activities under the guise of donations, charges for books etc. The request of the petitioners was in the year 1997 and the petitioners were informed in April, 1998. No cause of action for filing of the petitioners has arisen in favour of the petitioners. Exemption has been granted only to those institutions which have demonstrated that they are factually and really carrying on only activities for charitable purposes and they are not deriving any benefits by any such activities. As such, the petitioners are not entitled for exemption which has been granted to other institutions. The petitioners are not similarly situated with other such institutions. Hence, the petitioners are not entitled for any exemption. It has been held by the Division Bench of this Court in the case reported in Gujarat Vidya Sabha Vs. Municipal Corporation of the City of Ahmedabad, that issues regarding exemption u/s 132 of the BPMC Act can be raised before Small Causes Court and if such challenge is not successful, then only the petitioners could challenge before the High Court.

6. Heard the learned advocates for the parties at length. The learned Advocate for the petitioners contended that the exemption is also allowed to charitable institutions, even some part of that building is being used for administrative purpose. In this regard, he relied on the Supreme Court decision in the case of Christian Children Fund Inc. Vs. Municipal Corporation of Delhi and Others, wherein it has been held that the premises required by an organisation for its administrative office are an essential and an integral part of its charitable activities. Sometimes the administrative office of such organisations may be located where the charitable activities or activities are carried on and sometimes it is located away from such place depending upon the availability of the premises and convenience. So long as the premises in which the administrative office of the charitable organisation is carried on are exclusively used and occupied by its office, the premises would be ones covered by the exemption provided under the said provisions. To hold otherwise, viz. that it is only the premises where actual charitable activity is carried on alone is qualified for the exemption, is to be irrational.

7. The learned Advocate for the other side contended that in the cited case, only one room was being used for administrative purpose. The facts of that case are totally different and have no application to the facts and circumstances of the present case.

8. The learned Advocate for the respondent No. 2 contended that the activities of the petitioners do not fall within the purview of charitable purposes. He relied on the decision of the Supreme Court in the case of Municipal Corporation of Hyderabad Vs. Hyderabad Race Club, in which it has been held that the expression "charitable" conducting of horse races or training of horses for the races cannot be said to be charitable activity. The expression charitable in the context of Section 202(1)(b) means a benevolent activity calculated to benefit the poor or the deprived. Surely horse racing is not such a benevolent activity, however charitable a view one takes. It has also to be emphasised that it must be the very activity which is carried on, on the property, which must be charitable and not the application of the income of such activity.

The learned counsel for the respondent No. 2 also argued that the petitioners ought to have initiated proceedings before the Small Cause Court and unless adverse decision is received from that Court, the petitioners are not entitled to file these petitions in this Court. In support of his contention, he relied on the decision of the Division Bench of this Court in the case Gujarat Vidya Sabha Vs. Municipal Corporation of the City of Ahmedabad, wherein this Court has taken a view that the question whether the appellant was entitled to the benefit of the provisions of Section 132 was one which should have been decided by the Small Cause Court, Ahmedabad and a favourable decision not having been obtained, the appellant can agitate that question before this Court u/s 411 of the BPMC Act.

9. I have carefully examined the rival contentions of the learned Advocates for the parties. Whether any institution is also carrying on trade or business and

earning profit or gain on its building or land or its portion or the institution is running solely for charitable purposes is a question of fact which can be determined by appropriate Court. As per observations of the Division Bench of this Court, the issue can be decided by Small Causes Court on the basis of evidence led by the parties. This Court in writ jurisdiction should refrain from recording any finding on disputed questions of facts. Moreover, these are the cases in which the learned counsel for the respondent No. 2 referred to from the balance sheet, the receipts and payments for the year ending 31st March, 1994 which show that surplus income after the expenditure is transferred to the management account and that amount comes to Rs. 3,42,160/-. He also referred the extra fees of Rs. 1,20,881/-, management income, canteen contract rent Rs. 3750/- per month, bank interest of Rs. 28,053/- and admission charges of Rs. 14,053/- from staff and miscellaneous income of Rs. 1,52,726/-, cumulative interest on FDR Rs. 24,690, and an amount of Rs. 1,52,726/- was transferred from the management.

10. I find great force in the arguments of the learned Advocate for the respondent No. 2 that the petitioners-Trusts are also carrying on trade or business and are earning profits from canteen rent, interest and other charges and huge amount is transferred to the Trust and Management. Thus, the property of the petitioner-Trusts is not being used solely for charitable purpose. Hence, the petitioners are not entitled for exemption claimed by them. In view of this, these petitions have no merit and are liable to be dismissed. Accordingly, these petitions are dismissed. Notice is discharged in each of the petitions with no order as to costs.

