

PRIVY COUNCIL

Trustees of Tribune Press, Lahore

Vs.

Commissioner of Income-Tax, Punjab

P.C.A.No.117 of 1936

(Lord Thankerton, Sir George Rankin and Mr. Jayakar JJ.)

13.06.1939

JUDGMENT

SIR GEORGE RANKIN J.

1. The trustees of the Tribune Press, Lahore, appeal from the decision given on 4th June 1935, by the majority of the Judges composing a Full Bench of the High Court at Lahore upon a reference made to that Court under Section 66 (2), Income-tax Act, 1922. On 31st January 1933 the Income-tax Officer, Lahore, for the year of assessment 1932-33 assessed the appellants to tax upon an income of Rs. 61,629, calculated upon the figures for the previous year. No question now arises as to the amount of the assessment or the computation of the tax. The sole question is whether the income of the appellants is not exempt from tax under Clause 1 of sub section 3 of Section 4 of the Act.

(3) This Act shall not apply to the following classes of income :

(i) Any income derived from property held under trust or other legal obligation wholly for religious or charitable purposes, and in the case of property so held in part only for such purposes, the income applied, or finally set apart for application thereto.

2. In this sub-section "charitable purpose" includes relief of the poor, education, medical relief, and the advancement of any other object of general public utility.

3. Sardar Dayal Singh, a Sikh inhabitant of the Punjab, died in 1898 having by his will, dated 15th June 1895, created three separate trusts, to be administered by three independent "committees of trustees." Two of the trusts were for the establishment and maintenance of (1) an Arts College, (2) a public library. The third trust was declared by paras. 20 and 21 of the will in the following terms :

20. That my property in the stock and good-will of the Tribune Press and Newspaper in Anarkali, Lahore, shall vest permanently in a Committee of Trustees consisting of the following members, viz;

1. BabuJogendra Chandra Bose, M.A., B.L., Pleader, Chief Court, Lahore.
2. Mr. Charles GolakNath, B.A., LL.B., Barrister-at-Law.
3. Mr. HarkishenLal, B.A., Barrister-at-Law, Lahore.

21. That it shall be the duty of the said Committee of Trustees to maintain the said Press and Newspaper in an efficient condition, keeping up the liberal policy of the said newspaper and devoting the surplus income of the said Press and Newspaper after defraying all current expenses in improving the said Newspaper, and placing it on a footing of permanency.

4. By a deed of compromise dated 1st December 1906, whereby certain litigation as to the validity of the will was brought to an end, it was agreed between the parties thereto that "in case the Tribune Newspaper should cease to exist or be impossible to exist" the property belonging to the Tribune Press should become the property of the Arts College trust. Since the death of SardarDayal Singh in 1898, the trust in respect of the Tribune Press has been carried out and the newspaper of that name has continued to be published. The profits of the press and newspaper have been assessed to Income-tax since 1918. The claim to exemption was first made by the appellants in respect of the year 1932-33- that is, in the proceedings out of which this appeal arises. The claim was made for the first time before the Assistant Commissioner, and on his rejecting the appellants' contention, they applied to the Commissioner praying that on this point (and on another point which is not now in controversy) he would either accept their contentions or make a reference to the High Court. On 20th January 1934 the Commissioner referred to the High Court two questions framed in the following terms:

- (1) Is the income of the Tribune Trust liable to be assessed in the hands of the Trustees under the provisions of the Income-tax Act ?
- (2) If so, is it not exempt under Section 4(3) (i) of the Act ?

5. Upon the second question, which alone need now be referred to, the Commissioner having set out clauses 20 and 21 of the will gave as his opinion :

It will be very difficult to say whether the running of a newspaper is an object of general public utility, but the mere fact that income is used for the improvement of the paper is not enough to take it out of the category of a business concern.

6. The learned Judges of the Division Bench before whom the reference was first

heard were of different opinions, Jai Lal J. holding that the appellants' income was exempt from tax and Skemp J. holding that it was not. The question was referred to a Full Bench with the result that Young C. J. and Addison J. held that the income in question was not exempt, Tek Chand J. dissenting. From this decision (4th June 1935) the present appeal to His Majesty was brought, and at the first hearing-on 22nd and 23rd July 1937-it was considered by the Board to be desirable that the powers conferred by sub section 4 of Section 66 of the Act should be employed to obtain further information. Accordingly by an Order in Council dated 29th July 1937 it was directed in accordance with the advice tendered by the Board:

(2) That the case ought to be remitted to the High Court of Judicature at Lahore with a direction that the said High Court shall refer the case back to the said Commissioner under Section 66(4), Income-tax Act, 1922, first for the addition of such facts during the life-time of the testator SardarDyal Singh as may bear upon the proper interpretation of the expression "keeping up the liberal policy of the said newspaper" in clause 21 of the will of the said testator dated 15th June 1895 and secondly for the addition of such facts as to a compromise dated 1st December 1906 as may show whether the said compromise is binding on all parties interested in the estate of the said testator.

7. There is now before their Lordships a supplementary statement made by the present Commissioner, Mr. K. C. Basak, who has carefully assembled considerable material explanatory of the direction given by the testator in the phrase "keeping up the liberal policy of the said newspaper," and showing, as their Lordships think very fairly, the nature and purpose of the trust. The first issue of the paper was dated 2nd February 1881, and contained an article entitled "Ourselves" which was a statement of the paper's aims and objects. Two years later (3rd February 1883), a further article of the same character was published headed "Our Second Anniversary." Extracts from issues of the paper between 1881 and 1898 have been selected by the Commissioner and by the appellants to throw light on the character and policy of the paper in the lifetime of its founder. The sole use which their Lordships are concerned to make of these materials is to arrive at a true construction of the trust, the testator having expressed his intentions by reference to a newspaper which had been published in his lifetime and to a policy the character and purpose of which must necessarily be collected from its previous issues. It is not necessary or relevant to inquire as to manner in which the trust has been or is being carried out since the date of the testator's death. The question is as to the true nature and character of the trust. No question here arises such as was dealt with in *Brighton College v. Marriott* where it was held that the English Act as it

then stood provided no exemption for profits of a trade carried on by a charity even if the carrying on of the trade was the sole and only purpose of the charity. In the letter of reference there is no suggestion that the income under assessment is not derived from property held under the trust declared in paras. 20 and 21 of the will.

8. Their Lordships are not prepared to hold that the property referred to in these paragraphs of the will is held for the purpose of 'education' in the sense of that word as it appears in Section 4 of the Act. Prima facie therefore the only question for decision is whether that property is held under trust wholly for the advancement of an object of general public utility. This was the view taken in the High Court by Tek Chand J. who contrasted the wide terms of the exempting clause in the Income-tax Act with the observations of Lord Lindley in *re Macduff*, where after referring to a well-known passage in Lord Macnaghten's speech in *Commissioners for Special Purposes of the Income-tax v. John Frederick Pemsel*, Lord Lindley held that in English law there might be some purposes of general utility which might be charitable and some which might not, the true test being the spirit or intention of the Statute of Elizabeth (43 Eliz. c. 4). Learned counsel for the respondent in the present case while not apparently conceding that under the Indian statute the sole test to be applied to the object of a trust was that of general public utility was willing that this should be assumed in the present case. He suggested that the question whether an object was of general public utility was a question of fact to be found and stated by the Commissioner and not a question of law for the Court. Their Lordships while unwilling to pronounce upon any matter which has not been argued before them consider that the Courts in India might be misled if the Board appeared to cast doubt upon the view that the admissibility of a claim to exemption from income-tax must be determined by the language of the special provision made by the Act in that behalf. They are also of opinion that the question whether a particular object is of general public utility, like the question whether a particular trust is charitable, is a question of law, though doubtless it is for the Commissioner to find and state any facts bearing thereon: cf. *Commissioners of Inland Revenue v. Temperance Council, etc* at p. 772

9. In the present case the Commissioner properly stated it as a question of law under Section 66 and answered it as such - indeed he put the point as being "whether the trust can be deemed to be a charitable trust ?" The importance of applying correct principles in such a matter is manifest by reason of the rule against perpetuity laid down as to wills in section 114, Succession Act 1925, and as to transfers inter vivos by Section 14, Transfer of Property Act, 1882. As to the latter, by Section 18

exception is made for transfer of property "for the benefit of the public in the advancement of religion, knowledge, commerce, health, safety or any other object beneficial to mankind." By a long course of judicial decisions following English authority an exemption for charitable trusts has been implied or read into section 114, Succession Act, and by Section 118 restrictions are imposed upon bequests for "religious or charitable uses." and Section 2, Charitable Endowments Act, 1890, contains the same definition of charitable purpose as is given by the Income-tax Act, but with the addition of words excluding religious purposes. It was considered by Jai Lal and Tek Chand JJ. that on the question whether a particular object or purpose was of general public utility the true test is not what the Court considers to be beneficial to the public but what the testator considered to be so. In so holding they were following what was said by Chitty J. in *In re Foveaux Gross v. London Anti-Vivisection Society*, That case was on this point dissented from by Russell J. in *In re Hummeltenbergat p. 242*, where it was held that though the personal or private opinion of the Judge is immaterial, nevertheless for a charitable gift to be valid it must be shown (1) that the gift will or may be operative for the public benefit and (2) that the trust is one the administration of which the Court itself could if necessary undertake and control:

If a testator by stating or indicating his view that a trust is beneficial to the public can establish that fact beyond question, trusts might be established in perpetuity for the promotion of all kinds of fantastic (though not unlawful) objects.

10. Their Lordships are in agreement with this view and see nothing in the Income-tax Act to discharge the Court of its responsibility in coming to a finding as to the character of the object of a trust -a matter which bears directly upon its validity. It is to be observed moreover that under the Income-tax Act the test of general public utility is applicable not only to trusts in the English sense but is to be applied to property held under trust "or other legal obligation"-a phrase which would include Moslem wakfs and Hindu endowments. The true approach to such questions in cases which arise in countries to which English ideas - let alone English technicalities- may be inapplicable was considered by the Board in *YeapCheah Neo v. OngChing Neo, (1875) 6 PC 381* and it was well said by Sir Raymond West in an Indian case, *Fatima Bibi v. Advocate-General, (1881) 6 Bom 42 at p. 50* :

But useful and beneficial in what sense? The Courts have to pronounce whether any particular object of a bounty falls within the definition; but they must in general apply the standard of customary law and common opinion amongst the

community to which the parties interested belong.

11. In the High Court stress was laid by the learned Chief Justice and by Addison J. on the fact that the Tribune Newspaper charges its readers and advertisers at ordinary commercial rates for the advantages which it affords. As against this the evidence or findings do not disclose that any profit was made by the newspaper or press before 1918 and it is at least certain that neither was founded for private profit whether to the testator or any other person. By the terms of the trust it is not to be carried on for profit to any individual. It cannot in their 'Lordships' opinion be regarded as an element necessarily present in any purpose of general public utility, that it should provide something for nothing or for less than it costs or for less than the ordinary price. An eleemosynary element is not essential even in the strict English view of charitable uses :

Commissioners v. University College of North Wales, (1909) 5 Tax Cas 408 at p. 414. There seems to be no solid distinction to be taken under the phrase "general public utility" between a school founded by a testator but charging fees to its pupils and a paper founded by a testator and sold to its readers. The purpose of providing the poor or the community in general with some useful thing without price or at a low price may doubtless be in itself a purpose of general public utility. But if another object be independently in itself of general public utility the circumstance that the testator's bounty was only in respect of the initial capital assets, or had only to meet a working loss temporarily and not permanently will not necessarily at least alter the character of the object.

12. The main objection now taken to the appellants' claim for exemption is on the ground that the Tribune Newspaper, as its founder intended it to be carried on, would contain matter in the nature of political propaganda and would be devoted to the advocacy of particular legislative measures considered by its founder to be measures of reform. It is not suggested that the views or measures to be advocated were in any way unlawful, but even so the political character, it is said, prevents the trust from being held to be for an object of general public utility. Lord Parker said in *Bowman v. Secular Society Ltd*

A trust for the attainment of political objects has always been held invalid, not because it is illegal, for everyone is at liberty to advocate or promote by any lawful means a change in the law, but because the Court has no means of judging whether a proposed change in the law will or will not be for the public benefit, and therefore cannot say that the gift to

secure the change is a charitable gift.

13. and in *In re Tetley*, (1923) 1 Ch 258=92 LJ Ch 351 at p. 262 where the gift was for "patriotic" and charitable objects, Russell J. said :

But must every application of the fund for a patriotic purpose be beneficial to the community and therefore charitable ? It seems to me that it is impossible to hold that. What is or is not patriotic is in many cases mere matter of opinion. Subsidizing a newspaper for the promotion of particular political or fiscal opinions would be a patriotic purpose in the eyes of those who considered that the triumph of those opinions would be beneficial to the community. It would not be an application of funds for a charitable purpose.

14. Again in *Commissioners of Inland Revenue v. Temperance Council, etc.*, Rowlatt J. finding that the first purpose of the assesseees was legislative temperance reform though the work was to be of a strictly non-party character observed :

Any purpose of influencing legislation is a political purpose in this connexion. Under these circumstances this is mainly a trust to secure a certain line of legislation, and if that is so I do not understand it to be disputed that that would not be a charitable trust. I think the authorities are clear upon it and I am not going to say anything more about it.

15. On the other hand it is to be observed that in this case Rowlatt J. rejected, but only upon the facts, the argument that the purpose of the Council was temperance and that legislation came in in a subsidiary way. and in *In re Scowcroft*. the devise of a building known as the Conservative Club and Village Reading Room in a certain parish to be maintained " for the furtherance of Conservative principles and religious and mental improvement, etc." was held to be a gift for religious and mental improvement. Stirling J. said :

It is therefore a gift in one form or another for religious and mental improvement, no doubt in combination with the advancement of Conservative principles; but that limitation it appears to me is not sufficient to prevent it from being a perfectly good charitable gift as undoubtedly it would be if it were a gift for the furtherance of religious and mental improvement alone.

In re Hood, was a case where a testator had bequeathed his residuary estate for the purpose of spreading Christian principles and aiding all active steps to minimize and extinguish the drink traffic. On the view that the former was the dominant purpose and that the latter was subsidiary thereto, the gift was upheld

even on the hypothesis that the latter purpose would not have been charitable in itself. In *Bonar Law Memorial Trust v. Commissioners of Inland Revenue* Finlay J. had to deal with a college founded in connexion with the Conservative party and after reviewing the cases above cited held that the question was whether the dominant purpose was a good charitable purpose or not :

The fact that the education was entrusted to the Conservative party would not I think affect the validity of the trust if in truth it was a trust for education; but on the other hand, if the true view is that the trust was a trust for the promotion of Conservative principles and that the education, the lectures and so forth were subsidiary to that which was the main and dominating purpose then the fact that the lectures and so forth would be educative would not be sufficient to make the trust a trust for charitable purposes only.

16. Holding that the college was in effect an educational centre for the Conservative party and that this was in accordance with the trust deed, the learned Judge decided that the claim for exemption from tax could not be sustained. These English decisions are in point in so far only as they illustrate the manner in which political objects in the wide sense which includes projects for legislation in the interests of particular causes, affect the question whether the Court can regard a trust as being one of general public utility. In the original letter of reference it was not suggested by the Commissioner that the newspaper was intended by its founder to be a mere vehicle of political propaganda, and in the case of *Sardar Dayal Singh* it seems unreasonable to doubt that his object was to benefit the people of Upper India by providing them with an English newspaper- the dissemination of news and the ventilation of opinion upon all matters of public interest. While not perhaps impossible, it is difficult for a newspaper to avoid having or acquiring a particular political complexion unless indeed it avoids all reference to the activities of Governments or Legislatures or treats of them in an electric or inconsistent manner. The circumstances of Upper India in the last decade of the 19th century would doubtless make any paper published for Indian readers sympathetic to various movements for social and political reform. But their Lordships having before them material which shows the character of the newspaper as it was in fact conducted in the testator's lifetime have arrived at the conclusion that questions of politics and legislation were discussed only as many other matters were in this paper discussed and that it is not made out that a political purpose was the dominant purpose of the trust.

17. They think that the object of the paper may fairly be described as " the object of supplying the Province with an organ of educated public opinion" and that it should

prima facie be held to be an object of general public utility. Having regard to the particular circumstances of the time, the directions of the testator and the evidence as to the contents of the paper before 1898 their Lordships think that the present case is nearer on its facts to (1898) 2 Ch 638 than it is to the case in (1933) 17 Tax Cas 508 or to the case put by Russell J, in (1931) 1 Ch 258 of a newspaper subsidized for the promotion of particular political or fiscal opinions. They do not think that in these circumstances the case can be regarded as outside the ambit of the exemption clause of the Indian Act. It is not necessary to consider what the position would be if the trust declared by the will were for any reason to fail in the future. For the reasons given their Lordships are of opinion that this appeal should be allowed and that the second of the two questions referred to the Court by the Commissioner's letter of reference dated 26th January 1934 should be answered in the affirmative. They will humbly advise His Majesty accordingly. The respondent will pay the appellants' costs of the reference in the High Court and of this appeal.

Appeal allowed.

Cases Referred.

, (1926) AC 192=95 LJ KB 356=134 LT 417=10 Tax Cas 213=70 SJ 245=42 TLR 228

(1896) 2 Ch 451=65 LJ Ch 700=74 LT 706=45 WR 154 at p. 467,

(1896) 2 Ch 451=65 LJ Ch 700=74 LT 706=45 WR 154 at p. 467,

(1891) AC 531=61 LJ QB 265=65 LT 621=55 JP 805 at p. 583,

., (1926) 10 Tax Cas 748=70 SJ 837=42 TLR 618=136 LT 27

(1895) 2 Ch 501=64 LJ Ch 856=13 R 730=73 LT 202=43 WR 661.

, (1923) 1 Ch 237=92 LJ Ch 326=129 LT 124=67 SJ 313=39 TLR 203

., (1917) AC 406=86 LJ Ch 568=117 LT 161=61 SJ 478=33 TLR 376 at p. 442 :

(1898) 2 Ch 638 = 67 LJ Ch 697=79 LT 342=15 TLR 4

(1931) 1 Ch 240=100 LJ Ch 115 =143 LT 691=74 SJ 549=46 TLR 571

, (1933) 17 Tax Cas 508=77 SJ 101=42 TLR 22