

PRIVY COUNCIL

All India Spinners Association of Mirzapur, Ahmedabad

Vs.

Commissioner of Income-tax, Bombay Presidency, Sind and Baluchistan

P.C.A No.64 of 1942

(Lord Thankerton, Lord Wright and Sir Madhavan Nair JJ.)

27.06.1944

JUDGMENT

LORD WRIGHT J.

1.This is an appeal from an order dated 8th April 1941 of the High Court of Bombay (Sir J.W.F. Beaumont, C.J. and Wadia J.) answering adversely to the appellant a question contained in a reference under Section 66(3), Income-tax Act, 1922, (hereinafter called "the Act") made by the respondent dated 20th March 1941. The year of assessment concerned is the year 1936-37 the relevant accounting year being the year ended 31st December 1935. Throughout the accounting year and the year of assessment the appellant was an unregistered and unincorporated association of individuals. Its activities consisted in the acquisition of yarn, and also raw cotton, which was then given out to various poor people to be spun by them into yarn all of which yarn was then given out to other poor people for hand-weaving into cloth. The cloth so produced for the appellant was then sold by the appellant. During the relevant accounting year these activities resulted in a profit to the appellant. The appellant also had income from interest during the same year and the appellant was assessed to income-tax and super-tax for the year 1936-37 on the whole of such profit and income. The question at issue in this appeal is whether the appellant was for the year 1936-37, exempt from liability to income-tax and super-tax under Section 4(3) (i) of the Act, on the ground that the whole of the profit and income in question was "income derived from property held under trust or other legal obligation wholly for charitable purposes." This depends on the true construction as applied to the facts of the case of Section 4(3) (i) of the Act which is as follows:

"(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

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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."

2. The facts stated in the reference can be summarized as follows: The appellant was formed in the year 1925, and had its origin in a resolution of the All India Congress Committee passed in 1925. It was started for the purpose of the development of the village industry of hand-weaving (called "khadi") and the weaving of cotton material (called "khaddar") by the use of hand looms. The constitution of the appellant is set out in a document without date or signature (ex. "g" of the record) which was contained in a publication by the appellant called the "Khadi Guide," published in 1931. Clause 1 of this document is in the following terms :

"Whereas the time has arrived for the establishment of the expert organization for the development of the hand-spinning and khaddar and whereas experience has shown that such development is not possible without a permanent organization, unaffected and uncontrolled by politics, political changes or political bodies, an organization called the All India Spinners' Association is hereby established with the consent of the All India Congress Committee as an integral part of the Congress organization but with independent existence and powers."

3. Certain of the other clauses of the document read as follows :

"Clause 2 (A). The said Association shall consist of members and associates and donors hereinafter defined and shall have a Board of Trustees who shall also be the Governing Body of the Association."

4. Clause 2 (B) also contains the names of the members of the Board of Trustees and Executive Council, which included Mahatma Gandhi and Pandit Jawaharlal Nehru.

"Clause 3. That the funds and assets now held by the All India Spinners' Association and its various branches shall vest in the Board of Trustees who shall also be the Executive Council of the Association, and they shall hold the same for the purpose of this Association.

5. Clause 4. The Council shall have the right to raise loans, to collect subscriptions, to

hold immovable property, to invest funds under proper security, to give and take mortgage for the furtherance of hand-spinning and khaddar, to give financial assistance to khaddar organizations by way of loans, gifts or bounties, to help or establish schools or institutions where hand-spinning is taught, to help and open khaddar stores, to establish a khaddar service, to act as agency on behalf of the Congress to receive self-spun yarn as subscription to the Congress and to issue certificates and to do all the things that may be considered necessary for the furtherance of its objects, with power to make regulations for the conduct of affairs of the Association of the Council and to make such amendments in the present constitution, as may be considered necessary from time to time."

6. Later clauses of the constitution stated the conditions under which persons could become members of the Association. In particular they were to be over 18 years of age, habitually wearing khaddar, and depositing regularly with the Council each month 1000 yards of self-spun yarn well twisted and uniform. The method by which the appellant worked, and the manner in which its profits were earned were as follows: Out of the funds in its hands which have mostly been contributed by donations from the public and subscriptions from the members of the Association, the Association buys charkhas and handlooms, and supplies them to the inhabitants of villages within the limits of the various branches of the Association free of charge and further buys raw cotton and gives the same to the said persons for the purpose of spinning yarn from such cotton. The Association gives a certain wage to the said persons which, in some cases, is the sole source of income to those persons and in others adds to the earnings of the said persons so as to enable them to maintain and support their families. The yarn so spun is taken over by the Association and supplied to the other persons for weaving cloth on handlooms. The Association also buys hand-spun yarn from the said persons who have spun the same out of their own raw cotton, paying them for the same on the basis of the cost of the raw cotton and the wages for spinning the same into yarn. The persons to whom all the yarn is handed over for weaving are also paid a certain wage sufficient either in itself or as an addition to the other income of the persons to maintain and support their families. The wages so paid to the spinners and weavers are not based on the current wages prevailing for similar work but are fixed on the basis of giving to the said persons as far as possible an income sufficient to enable them to support their families. The cloth so woven is taken over by the Association and is sold in the khaddar stores established by the Association in various centres by the branches of the Association. The price charged to the public for such cloth is calculated on the basis of the cost price incurred by the Association in

the manner hereinbefore stated plus a certain percentage for shop and overhead charges, without any reference to or connexion with the demand for the same and the price of similar mill cloth sold in the market. In the ordinary course the monies realized by the Association by such sales are a little more or less than the cost calculated on the aforesaid basis. When there is a surplus in the amount realized by the sale of cloth, such surplus is utilized in the same manner as the other funds of the Association inter alia in getting yarn and cloth manufactured and providing wages for the persons engaged in such manufacture. The Commissioner duly referred the following question with his opinion to the High Court:

"Whether having regard to the objects of the Association and the manner in which they are carried out and the purpose for which its funds are applied, the income of the Association is liable to income-tax and/or super-tax."

7. His opinion was in substance that the dominant purpose of the Association was political and therefore not charitable and that it was in any event not a charitable purpose, the object of the Association being the promotion and organization of the hand-spinning and weaving industry which was carried out on a strictly trading basis and was in no way different from the activity of a trading concern. The wages paid to the workers were based on the work they did and not on their needs. The object he thought was not the relief of the poor, nor was the object one of general public utility. At most only a section of the general public could benefit from it. On the reference coming before the High Court in Bombay, constituted by the Chief Justice and Wadia J., they answered the question in the affirmative. They based their decision on the ground that assuming as they did for the purpose of the case that the object was the relief of the poor, it still did not fall within Section 4(3) of the Act, because the income was not derived from property held under trust or other legal obligation, for religious or charitable purposes. There was, they held, no trust deed nor any clear declaration of trust, and hence no legal obligation to dispose of the income for the purpose of getting yarn and cloth manufactured, and providing wages for the persons employed in the manufacture, though that had been the practice followed throughout by the appellant. On that ground alone they held that Section 4(3) did not apply; Wadia J. however said

"if an Association is set on foot by a political organization and is connected with it but still has for its real object the relief of poverty, its connexion with the political organization does not in my opinion make its real object any the less charitable."

8. Their Lordships agree with that opinion. Their Lordships, however, do not feel able

to concur in the decision of the High Court. In their judgment the appellant has brought itself within the exemption contained in Section 4(3) (i), Income tax Act, 1922. They hold that the income sought to be assessed is income derived from property held under trust or other legal obligation wholly for religious or charitable purposes on the basis of the statutory provision that "charitable purpose" includes relief of the poor, education, medical relief and the advancement of any other object of general public utility. It is now recognized that the Indian Act must be construed on its actual words and is not to be governed by English decisions on the topic. The English decisions on the law of charities are not based upon definite and precise statutory provisions. They have been developed in the course of more than three centuries of the Chancery Courts. The Act of 43 Elizabeth (1601) contained in a preamble a list of charitable objects which fell within the Act, and this was taken as a sort of chart or scheme which the Court adopted as a ground work for developing the law. In doing so they made liberal use of analogies so that the modern English law can only be ascertained by considering a mass of particular decisions often difficult to reconcile. It is true that Section 4(3) of the Act, has largely been influenced by Lord Macnaghten's definition of charity in *(1891) AC 531, Pemsel v. Commissioners for Special Purposes of Income-tax at p. 583*, but that definition has no statutory authority and is not precisely followed in the most material particular ; the words of the section are "for the advancement of any other object of general public utility" whereas Lord Macnaghten's words were "other purposes beneficial to the community." The difference in language, particularly the inclusion in the Indian Act of the word "public" is of importance. The Indian Act gives a clear and succinct definition which must be construed according to its actual language and meaning. English decisions have no binding authority on its construction and though they may sometimes afford help or guidance, cannot relieve the Indian Courts from their responsibility of applying the language of the Act to the particular circumstances that emerge under conditions of Indian life.

9. The judgment appealed from treated the problem under two main headings: (1) was there a trust or other legal obligation under which the property from which the income was derived was held; (2) was that trust a legal obligation for the relief of the poor or for any other object of general public utility? In dealing with these questions it is in their Lordships' opinion necessary to examine the constitution of the appellant association. It is true that it is an unincorporated body of individuals, but it is assessable and chargeable as such under Section 3 of the Act, as amended by the India Income-tax (Amendment) Act, 1930, which includes every individual, Hindu undivided family, company, firm and other association of individuals as taxable.

10. Clause (1) of the constitution establishes the association as an organisation for the development of hand-spinning and khaddar.

11. This is the dominant object and purpose of the Association. It is to be a permanent organization, unaffected and uncontrolled by politics, and though established with the consent of the All India Congress Committee as an integral part of the Congress Association, it is to have independent existence and powers. The statement of the object excludes in their Lordships' opinion any question of profit-making and also excludes any element of party politics. Any participation in political propaganda would be ultra vires. Under clause (3) "the funds and assets" then held by the All India Spinners Association were to vest in the Board of Trustees, who were also to be the executive Council and "to hold the same for the purposes of the Association." Clause (4) defines the powers of the Council of the Association, which is to have independent existence and "they are to do all things which may be necessary for the furtherance of its objects." There is of course a special provision enabling the Council to act as an agency on behalf of the Congress to receive self-spun yarn as subscriptions to the Congress, but that has been rightly regarded as a separate and independent matter, apart from the general object of the Association and not affecting its freedom from political purposes. There is no power to distribute any surplus income among its members. By clause (20) every person wishing to join the Association must sign an application to be enrolled stating that he has read the rules and forwarding his subscription. On a fair construction of the constitution, their Lordships cannot agree with the opinion of the learned Judges that no trust or legal obligation is shown binding the Association or its trustees or council to devote the property of the Association from which the income is derived to the charitable purposes for which the Association was formed, assuming for the moment that the purposes were charitable within the meaning of the Act. It is not really questioned that the practice has been to use the surplus income for the purposes of the Association and that the business has been carried on in pursuance of the primary purpose in addition mainly by beneficiaries of the Association. The practice however is not enough. The purpose is to be ascertained from the constitution. In their Lordships' judgment its provisions already quoted show a trust or binding obligation so to carry it on. The constitution is a written instrument, the terms of which bind not only the trustees and council, but the members who by their application for membership accept its rules. Any departure either by the trustees or Council or members from the rules would be a breach of trust or legal obligation which the Court could restrain. A formal deed is not necessary to constitute a trust, still less to constitute a legal obligation binding the

trustees, the Council and the members inter se. Their Lordships hold that there is such a trust or at least that there is a legal obligation, which is all that the section requires. It is true that the rules may be altered by the unanimous agreement of all the members. But that is immaterial so long as the rules remain unaltered. The High Court have, it seems, attached too much importance to cls.(3) and (4) of the constitution and not sufficient importance to clause (1), which is the constituent and dominant provision.

12. On that footing a question was suggested that the property of the association from which the profits were derived was not "held" within the meaning of the section. But clause (3) provides expressly that the funds and assets of the association are to vest in the trustees, to be held for the purposes of the association. The High Court seem to have been of opinion that the property from which the profits were derived was the cloth which from time to time was sold. Their Lordships, however, prefer the view implied in the decision of the board in *Tribune Press, Lahore v. Commissioner of Income-tax* to which fuller reference will be later made, where the "property" in question was the stock and goodwill of the press and newspaper. Here the property consisted of the organisation and the undertaking as well as in the fluctuating stock of yarn and cloth.

13. So far the case seems to fall within the exemption of the section. The second and more important point is whether the undertaking is a charity. Their Lordships are fully conscious of the importance of applying correct principles in such a matter and do not repeat the reasons for caution stated by the board in 66 IA 2412 at p. 250. The limits fixed by the section must be strictly observed and its definition must be satisfied by the character of the association and its activities. Whether that is so depends on the true construction of the section and on the meaning and effect of the constitution which defines the character of the association. The construction of the section is obviously a question of law, but so also is the question what is the real purpose of the association. The Court must make its decision on the latter point on the basis of the facts found for it, but given the facts the question is one of law. In this particular case the principal fact is the constitution, the true construction of which is again a question of law. The High Court were prepared to assume (in the words of Wadia J.) that

"the real underlying object of the association was to benefit the poor agriculturists in the villages, specifically at that time of the year when they were not actively engaged in agricultural operations."

14. The Judges in India with their knowledge of Indian conditions are peculiarly qualified to form an opinion on these matters. But their Lordships see no sufficient

reason to doubt the conclusion that the primary object of the association was the relief of the poor. That would be enough prima facie to satisfy the statute. But there is good ground for holding that the purposes of the association included the advancement of other purposes of general public utility. These last are very wide words. Their exact scope may require on other occasions very careful consideration. They were applied in 66 IA 2412 without any very precise definition to the production of the newspaper in question under the conditions fixed by the testator's will. The board stated (at p. 256) that

"the object of the paper might 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. These words their Lordships think would exclude the object of private gain, such as an undertaking for commercial profit though all the same it would subserve general public utility. But private profit was eliminated in this case. Though the connexion in one sense of the association with Congress was relied on as not consistent with "general public utility" because it might be for the advancement primarily of a particular party, it is sufficiently clear in this case that the association's purposes were independent of and were not affected by the purposes or propaganda of Congress. Nor is there any ground for the Court holding that the scheme is not one which "may be" for the public benefit. The Court might in proper cases refuse to admit as charitable schemes, purposes eccentric or impracticable. But though economists might differ about the wisdom of some aspect at least of the association's purposes, the Court could not hold that it was beyond the pale of legitimate charitable trusts. This general line of reasoning seems to accord with that of the board in 66 IA 241. The English cases there cited do not turn on the words "general public utility," but they illustrate how Courts of first instance in England have actually dealt with the particular questions there submitted to them. Their Lordships are of opinion that the appeal should be allowed and the question submitted to the Court answered in the negative. The respondent will pay the appellant's costs of this appeal and of the proceedings below. They will humbly so advise His Majesty.

Appeal allowed.

Cases Referred.

AIR 1939 PC 208 : ILR 1939 Lah 475 : 66 IA 241 : ILR (1939) Kar PC 337 (PC),