

Laxman Balwant Bhopatkar (Since Deceased) by Another Trustee Dr. Dhananjaya Ramchandra Gadgil and Others

Vs

The Charity Commissioner, Bombay

Civil Appeal No. 313 of 1958

(CJI B. P. Sinha, T. L. Venkatarama, K. Subha Rao, J. R. Mudholkar, N. Rajgopala Ayyangar JJ)

01.05.1962

JUDGMENT

RAJAGOPALA AYYANGAR, J. –

This is an appeal on a certificate of fitness granted by the High Court of Bombay under Art. 133(1)(b) & (c) of the Constitution, and the question raised for consideration is whether the "Kesari & Mahratta Trust" of which the appellants are Trustees was or was not a "public Trust" within the meaning of the Bombay Public Trust Act (Act XXIX of 1950) which it will be convenient to refer to as the Act.

The act which by its long title was enacted "to regulate and to make better provision for the administration of public, religions and charitable Trusts in the State of Bombay" came into force on August 14, 1950. Section 18 of the Act enacted :

"18. (1) It shall be the duty of the trustee of a public trust to which this Act has been applied to make an application for the registration of the public trust.

#....."##

Section 66 of the Act provides penalties according to a table appended to it for contravention of the several sections set out in it and among the sections so included is s. 18(1). In this state of affairs the trustees of the appellant-trust addressed on April 16, 1952, a communication to the Assistant Charity Commissioner, Poona region, Poona - being the authority empowered to effect the registration of the Trust, if it was a public Trust - that "the Kesari & Mahratta Trust" was not a "public Trust" within the meaning of the Act and submitted that it was not liable to the registered thereunder. Section 19 of the Act empowers an Assistant Charity Commissioner to make an enquiry for ascertaining, inter alia, "whether a Trust exist and whether such Trust is a public Trust." This officer held an enquiry under this provision, giving an opportunity to the trustees of the Trust to make representations and urge their contentions. Thereafter he recorded a finding under s. 20 of the Act that it was a public Trust to which the Act applied and passed an order directing the Trust to be registered.

Section 70 of the Act provides for appeals being filed against findings recorded and orders passed under s. 20 by Assistant Charity Commissioners, to the Charity Commissioner, and the trustees availed themselves of this remedy and repeated their contentions before the Charity Commissioner. The appellate-authority however reached the same conclusion as the Assistant Charity

Commissioner and dismissed the appeal. Section 72 of the Act enables a party aggrieved by the decision of the Charity Commissioner under s. 70 on the question "whether a trust exists and whether such trust is a public trust" to apply to the Court to set aside the said decision. The trustees moved the Court under this provision but the application was dismissed by the learned District Judge, Poona. It was from this Judgment of the learned District Judge that the trustees filed an appeal to the High Court of Bombay who also dismissed the appeal but granted the certificate which has enabled the present appeal to be filed.

It would be seen from the above narrative that the entire question raised by the appeal is concerned with whether the Kesari & Mahratta Trust was a "public Trust" within the meaning of the Act so as to justify the order of the Assistant Charity Commissioner requiring the trustees to have the institution registered. Section 2 of the Act which contains definitions defines a public Trust in cl. (13) thus :

"an express or constructive trust for either public, religious or charitable purpose or both....."

to read only the portion relevant for this appeal. The other material provision is s. 9 of the Act which defines "Charitable purpose". The purpose defined include :

- (1) relief of property or distress,
- (2) education,
- (3) medical relief, and
- (4) the advancement of any other object of general public utility but does not include a purpose which relates -
 - (a) exclusively to sports, or
 - (b) exclusively to religious teaching or worship."

There are certain other provisions of the Act to which our attention was drawn during the course of the arguments but as both their construction as well as their constitutional validity which were the subject of debate before us would arise only if the Trust were a public charitable Trust within the definition in s. 2(13) with s. 9, we purpose immediately to proceed to consider the submissions made by learned Counsel in relation to this crucial point.

The Trust in question was created by a deed dated August 16, 1920 by three persons. The first two authors of Trust were the sons of Lokmanya Bal Gangadhar Tilak who had died on August 1, 1920, leaving a will executed on April 5, 1918, to the terms of which we shall refer presently. The third executant was the executor appointed by the deceased under his said will. The Trust deed in its preamble refers to the execution of the will and after reciting the fact that the will was agreed to in all respect by the three executants proceeds to state that the Trust deed in regard to the Kesari Printing Press Newspapers etc. was being executed in order that the objects recited in the will may be fulfilled. The Trust deed contains 13 clauses but of these those relevant for the consideration of the matters arising in the appeal are only two and they are cls. 1 and 8. Clause 1 specifies the objects of the Trust, while cl. 8 makes provision for contingencies arising from the trustees becoming incapable of discharging their duties as well as from the institution ceasing to exist. It

reads :

"In the event of any of said Trustees becoming incapable of discharging the duties of the Trust for any reason whatsoever, such person as, in the opinion of both the trustees, may be fit to discharge the duty in accordance with the wishes of the Lokamanya Tilak shall be appointed as a trustee for the perpetuation of this institution and Trust. If perchance, there is only one Trustee left for making this appointment, he shall appoint a Trustee following the above policy. And all the rights of the Trustee of the said institution under this Trust deed, shall vest in the Trustee so appointed. If for any reason whatever, new Trustees are not appointed or none of the prior Trustees survives, the panchas mentioned (under appointment of New Trustees by the Panchas) in clause 8, under the heading of 'the Printing Press' in the Will of the Lokamanya Tilak or the Panchas appointed in their own place by such Panchas shall appoint the new Trustees. But if such appointment of New Trustee is not made in the manner stated above, the Trust Estate shall revert to Nos. 1 and 2 of us or to their heirs, 'Primarily ' in the capacity of Trustees as such. If for any reason this institution ceases functioning, for the time being but if it is possible to revive that institution, such Trustees who may be present and fit to carry on the institution under this Trust-deed. However, if this institution, ceases to exist, for any reason whatsoever, and it is thought that it is not possible to revive it at any time later on, the trust property shall be of the ownership of Nos. 1 and 2 of us or their heirs. The trustees of the institution individually, or their heirs shall have to private (personal) right whatever to this property."

It is only necessary to add that learned Counsel for the appellant-Trustees assured us that the appellants had no intention at all of abandoning the objects of the Trust or ceasing to be bound by the terms of the Trust deed even in the event of our holding that the Trust was not a public charitable trust, but that cherishing as they did the memory of Lokamanya Tilak they would carry on the mission entrusted to them by the great leader for ever. As almost the entire argument in the appeal before us as well as the decision against the appellants in the Courts below have rested wholly on the interpretation and legal effect of the provisions contained in cl. 1 it is necessary to set this out in full. The Trust deed is in Marathi and the following is its English translation accepted by both parties.

"This Trust deed has been made as a means to the fulfilment perpetually and uninterruptedly after the death of the late Lokamanya Bal Gangadhar Tilak of that very object of his with which he took all activities after he took charge of the newspapers - the Kesari and Maratha such as of spreading political education through the newspapers and thereby making people alive to their political rights and carrying on other multifarious public activities conducive to the national ideal etc."

Pausing here, is it necessary to mention that the translation as it appears in the Paper Book reads "such as spreading national education through those newspapers etc." It was however agreed that the adjective "national" was not a correct rendering of the Marathi expression "Rajakia" which was more accurately denoted by the word "political" and we therefore proceed on the translation which was accepted before us by both the parties.

It will be seen from the preamble and cl. 1 that the Trust was brought into existence for the purpose of fulfilling the last wishes of the Lokamanya as expressed in his will dated April 5, 1918. The terms

of the will have therefore relevance for understanding the object sought to be achieved by the Trust. The will was made in Colombo on April 5, 1918. Most of the dispositions of the will are taken up with legacies to his sons but the disposition we are concerned with occurs in cls. 3 and 4 of the will and we shall read the relevant portions of those clauses. Clause 3 (1) which is headed "The Printing Press" reads:

"I have made a public trust of the newspapers, the office, the printing press, the machine and the foundry, the newspaper library and security-money in respect of newspapers."

This, however, was not accurate; for though evidently the Lokmanya had intended to create a trust, no formal deed therefor had been executed and it was this deficiency that was supplied by his sons and the executor appointed under the will. Clause 4 of will is of relevance and it ran :

"The policy of the papers (editorial policy) shall be kept as it is. Under no circumstances shall it be changed."

The other provisions of the will do not bear upon the points arising in this appeal.

The question now for our consideration is whether under cl. 1 of the deed of trust a public charitable trust has been created. Analysing the provision of the clause it would be seen that the prime object of the trust was the fulfilment of the basic purpose which animated the activities of the late Lokmanya and which he sought to accomplish through the two newspapers - Kesari and Mahratha after he took charge of them. This has to be read with the provision of the will directing the continuance of the two newspapers with their policy entirely unchanged. As if in explanation or exemplification of this prime purpose we have the statement that the object the Lokmanya sought to achieve through the two newspapers was that of spreading political education and thereby making the people alive to their political rights and carrying out other multifarious public activities conducive to the national ideal.

Pausing here, it is necessary to mention that though the object of the trust was thus intimately bound up with the policy and purpose of the Kesari and Mahratha after the Lokmanya took charge of them, no evidence was led at any stage by either party as to what precisely was the policy or the object of the two newspapers which was sought to be achieved by the Lokmanya through them. Nor was evidence placed before the Court of the precise aims and objects which the Lokmanya inculcated by his teachings through these newspapers. It was possibly assumed that the life and ideals for which the Lokmanya stood, and in particular the matters which he considered as the prime purpose and policy of these two newspapers with which he was connected for over two decades, were matters of history so well-known to the Courts and authorities in Maharashtra and therefore on which no formal evidence was required to be adduced. We would however, add that such evidence on the record would have lightened our task and that it is with this handicap that the point in controversy in the appeal has to be decided.

This might be the convenient stage at which reference could be made to a previous occasion when the interpretation of the trust-deed with particular reference to the question of its character as a public charitable trust came up for consideration before the Courts. Section 4(3) of the Indian Income-tax Act, 1922 exempts from income tax "any income derived from property held under a trust or other legal obligation wholly for religious or charitable purposes in so far as such income is applied or is accumulated for application to such religious or charitable purpose....." The section

carried a definition of "charitable purpose" which was stated to include "relief of the poor, education, medical relief and the advancement of any other object of general public utility" which, it could be seen, is in terms the same as the definition of a "charitable purpose" under the Act. The claim of "the Kesari and Mahratha Trust" to exemption under this provision came up for consideration before the High Court of Bombay on a reference under s. 66(2) of the Indian Income-tax Act. The reference was heard by Beaumont, C.J., and Rangnekar, J., and the learned Chief Justice delivering the Judgment of the Court said :

"To my mind the trust which is contained in cl. 1 of the deed is too vague and wide to be regarded as a charitable trust within the meaning of the Income-tax Act. Some of the purposes, no doubt, are charitable but others are not and the whole of the funds may be applied to non-charitable purposes. The purposes include organising public movements and even if you limit those general words by the words 'calculated to promote the national ideal', it seems to me impossible to say that the promotion of public movements calculated in view of the trustees to promote the national ideal can be regarded as necessarily of public utility."

The learned Judges therefore held that the trust was not entitled to exemption under s. 4(3) of the Income-tax Act. Learned Counsel for the appellant did not contend before us that this judgment was res judicata in these proceedings for the decision of the matter now before us, but as expressing the views of the learned Judges on the construction of the document whose interpretation is the subject of dispute in the present case. With these observations we shall put aside that decision and proceed to construe the terms of cl. (1) of the deed to find out how far the object sought to be achieved are within the definition of "charitable purpose" within the Act.

In doing this, it would be convenient first to set out the construction which found favour with the learned Judges of the High Court in the judgment now under appeal and then consider the submissions made by learned Counsel on either side. Referring to cl. 1 and the matters to which it refers as needed to be done for fulfilling the objects of the trust, the learned Judges said that these were : (1) the awakening in the minds of the people a consciousness of their political rights by spreading the knowledge of politics through the newspapers "Kesari" and "Mahratha" and (2) organising various public movements calculated to promote the national ideal. They went on to state that the second purpose could not amount to a charitable purpose under the Bombay Public Trust Act and observed :

"As the nature and character of the public movements which were to be promoted for furthering the national ideal were not even indicated, much less specified it seems impossible to say that the organisation of public movements which in the opinion of the trustees might be calculated to promote the national ideal can be regarded necessarily as an object of general public utility within the meaning of clause (4) of section 9 of the Act. Those public movements would obviously not fall under any of the order clauses of section 9 either. Clearly, therefore, the second of the two purposes mentioned in clause 1 of the trust-deed cannot be considered a charitable purposes."

They, however, were of the view that the first purpose, viz., of "awakening a consciousness of political rights among the people by spreading the knowledge of politics through the newspapers" would be a charitable purpose. In this context they considered that the decisions of the English Courts that the attainment of political purposes would not be a charitable purpose as advancing an

object of general public utility could not be applied in India, and that even if the same were applicable, that under the Trust-deed before them, the awakening of political consciousness among the people was not identical with the advancement of political objects and that the awakening of such consciousness need not necessarily be for achieving a political purpose being out of the way they considered that the awakening of such consciousness would be an advancement of an object of public utility.

Several points were raised by learned Counsel for the appellant in support of his contention that the trust-deed did not create a charitable trust. His first submission was that the learned Judges of the High Court were wrong in considering that there were two objects to be subserved by the trust for the attainment of which the trust was founded, but only a single object and that that object was political in its nature and that consequently it was not a charitable purpose within the meaning of the law. His next submission was that even if there were two objects as the learned Judges of the High Court had held, they were not really independent objects but both of them were dominated by a single purpose which was political in its nature. At the base of both of these interpretations of the deed lay the submission that the object to be attained by the trust was political, and if so, it was not charitable.

We consider that there is considerable force in the submission of learned Counsel that the trust has been founded with a view to achieve a single objective or purpose, viz., "the fulfilment perpetually and uninterruptedly" of "the object with which the late Lokmanya took up all activities after he took charge of the newspapers 'Kesari' and 'Maharatha'." It might be that the activities for which the newspapers were utilised after he took charge of them disclosed more than purpose, but the common link between every such line of activity was that it is stemmed from a political purpose, for the newspapers were made to serve as the vehicle for achieving his objectives. The question therefore as to the purpose of the trust would have to be resolved by examining the various activities in which he himself engaged and the object with which he engaged in them, but the latter is not the basis upon which the High Court has proceeded in reaching a finding that the trust-deed disclosed a duality of purpose one of which the learned Judges recognised was not charitable but the other was held to be so. The words in the second limb of the first clause referring to "the spreading of political education through the newspapers and thereby making people alive to their political rights" and secondly "the carrying on other multifarious public activities conducive to the national ideal" were really meant as illustrations of activities undertaken by the late Lokmanya during his life-time as is manifest by the use of the words "such as" before the clause. If the object with which the Lokmanya took up his activities after he assumed charge of the newspapers was dominated by a political purpose and the newspapers were used by him to achieve that objective, the illustrations of his activities set out in the clause must be similarly construed. But to this we shall revert later.

This apart, there is one other way in which the matter might be approached. The learned Judges of the High Court have held that the object signified by the words "carrying on other multifarious public activities conducive to the national ideal" was much too vague to serve as an object or purpose of an enforceable trust, for besides the vagueness involved in the description of the activity as "conducive to the national ideal etc.", there is a further vagueness introduced by the words "other multifarious public activities". One mode of testing the validity of this object would be whether one could uphold the deed as constituting a valid enforceable charitable purpose if it had merely made provision for the trust-fund being utilized for carrying on multifarious public activities conducive to the national ideal etc." It is obvious that this question could be answered only in one way and that in favour of holding that the trust was too vague to be valid. If therefore the last portion of the clause was left out of account, two questions would have to be considered : (1) whether on a proper

construction of cl. (1) read with the rest of the deed, the object sought to be achieved is or is not a single one, and (2) whether the object indicated by the words "spreading of political education through the newspapers and thereby making people alive to their political rights" would be a charitable purpose within the meaning of s. 9 of the Act ? If the last part of the clause (1) were cut out, as too vague, the object of the Trust would read, to quote the relevant words "the fulfilment perpetually and uninterruptedly of the very object with which he (the Lokmanya) took up all activities after he took charge of the newspapers such as spreading political education through these newspapers and thereby making people alive to their political rights." We shall immediately proceed to deal with the import of the words "the very object with which he took up all activities after he took charge of the newspapers", but before us we do so we might state that we have no hesitation in holding that the words of the clause we have just extracted indicate but a single purpose, viz., the fulfilment of the objects with which Tilak took up all activities after he took charge of the two newspapers.

We have earlier drawn attention to the feature that no evidence was placed before the authorities under the Act or before the Courts as to the object which the Lokmanya sought to achieve by the two newspapers. Learned Counsel for the appellant invited our attention to the reported decision of the Bombay High Court where certain writings and articles of the late Lokmanya came up for consideration, and in particular to the articles which formed the subject-matter of the charges against the Lokmanya in prosecutions for sedition. But if one were confined to these, they must obviously give us only a partial and truncated idea of his activities and so are apt to afford but a distorted picture of the objects with which the two newspapers were conducted. We therefore examined the literature bearing on the life and work of this great leader and particularly two recent books on the topic "Bala Gangadhar Tilak by Parvate (1958) which was brought to our attention by Mr. Sanyal appearing for the respondent, and Lokmanya Tilak by Dhananjay Keer (September, 1959)". In doing so we have confined ourselves to the facts there stated and have refrained from taking into account the evaluation by the authors of Tilak's activities or their comments on any particular views on public or social matters entertained by the subject of their biography.

As a result of this examination we gather the following facts which are of relevance to the point before us. Tilak, though he was associated with the two newspapers from their start in or about 1881, took over the editorship of the Kesari in 1887 and became the sole proprietor of both the papers by 1893 and was in charge of their conduct till his death in 1920. Tilak was public figure who dominated the political firmament of the country for near three decades. He was a rebel against political wrongs. He was a champion of all who were oppressed and conceived it as his sacred mission to rouse the people to a sense of their wrongs and of their strength in winning their salvation, for it was his firm conviction that petty tyranny by the foreign bureaucracy was possible because of the ignorance of the people and their apathy to their condition. His ideas might be gleaned from his observation that people must fight for the vindication of their rights and those who were unmoved at the sight of injustice and the high handed policy of the Government, should not be regarded as human beings. The two newspapers were intended by Tilak to be the mechanism by which the wrongs done to the people should be brought home to them and their conscience roused to a sense of the injustices and oppressions to which they were subjected. In undertaking the responsibility of running the Kesari and the Mahratha it was a clear indication of his resolve to throw himself completely into public life and to devote himself to the task of the political education of the masses. He wrote in the Kesari about every public grievance and every public cause and this made him the champion of popular causes and a mass leader. The two the Kesari and the Mahratha were in no sense mere newspapers. They were primarily views-papers, vehicles of public opinion and the news they contained were carefully selected to be helpful to the views propagated in them.

Tilak looked upon Kesari as the chief vehicle for propagating his views as he wanted them to be disseminated as widely as possible. The objective determined its style; it was direct, simple and forthright. The paper championed the cause of the underdog and everywhere fought against injustice, contained a study of public complaints and grievances, exposed oppressive officers, criticised fearlessly and made constructive suggestions for the reform of the administration and championed the people's cause in every sense. During Tilak's days Tilak and Kesari became synonymous terms. The Kesari had been the citadel of the national fight and remained impregnable even through repressive campaigns and became a national asset. It was Tilak's confirmed view that the ills of the nation demanded political reforms and not immediate social reforms. Tilak challenged the right of the foreign bureaucracy to sit in legislative judgment on Indian society. It was the view of Tilak that respect must be paid to the prejudices of people and that one must try to make the humblest of them feel that he was one of them. Tilak was convinced of the futility of appeals to people made in the form of speeches and resolutions with their eyes fixed towards Government and realised that the Indian National Congress with which he was closely associated from 1889 would be able to ameliorate the condition of the people if the masses were attracted to it and their power harnessed to the chariot of the Congress. It was the main role in his life to stir up the people against their poverty, degradation and slavery. To foster opposition to British rule, to bring people into conflict with Government and to make Government unpopular was the great aim of Tilak's speeches, writings, and leadership. The enthusiasm and vigour of the people had to be utilized for keeping up their pride in the achievements of their ancestors and as a means of educating the common people. He sought to rouse the pride of the people in their past heroes so as to unify them into one body to achieve political liberation. His plea was that people should be taught what their rights were and how they could get their grievances redressed. That was the way to increase the influence of the Congress. He taught people to act fearlessly though peacefully and lawfully and get their grievances redressed, for the principle underlying his philosophy was that foreign yoke could be overthrown only when people were awakened and discontented, when it is not possible for a foreign Government to hold them under its sway. Without attracting the attention of the people to the unjust state of affairs no political progress was possible, nor reform in the administration. From about 1903 Tilak was gradually shifting to what the Moderates used to call Extremism, smouldering as he was at the apathy shown by the Moderate leaders towards active politics. The Congress which gave occasion for orators brandishing polished phrases and ended with prayers and petitions had grown sterile. He was coming to realise that politics must cease to be the pastime of the old orators and title holders. Though he felt that the record of the Congress left no room for disappointment or despair, its triumph lay in awakening the soul of the nation. The Moderates accepted British rule as a divine dispensation but the militant nationalists led by Tilak - refused to believe in the doctrine of divine dispensation. After the partition of Bengal in 1905 and the agitation which followed it Tilak wrote an article discussing the policy of boycott of foreign goods, and particularly of foreign cloth, and he considered that a boycott on a national scale was the proper remedy, but its results depended upon actions and not upon words. Tilak was then the spearhead of the Swadeshi movement, but even here it was fired and inspired by a political purpose, for he said :

"If the Indian Government dissociates itself from the commercial aspirations of the British Nation, then it will be time for Swadeshi workers to consider the question of dissociating their movement from politics. But so long as politics and commerce are blended together in the policy of the Government of India, it will be a blender to dissociate Swadeshi movement from politics."

And in the Kesari he declared that if it was unavoidable to use a foreign article, they should give preference to articles produced in Asiatic countries and the next preference should be given to other

European countries and America.

It was Tilak who made it the mission of his life to arouse the people against political slavery and foreign rule. He resolved to organise the people under the banner of the Congress and to make it the real spokesman of the people. The two newspapers served as the vehicle through which he aimed to achieve these objects. Possibly nothing brings out more forcibly the purpose and aim of the Lokmanya which animated his conduct of the newspapers than a self-appraisal which is extracted in the biography by Parvate already referred to.

A controversy arose in 1919 about Tilak's neglect of or apathy to social reform and his exclusive attention to political progress and there was an attack by Dr. Paranjpye on this aspect of the matter in an article in the Bombay Chronicle reviewing Tilak's sins of omission and commission. Tilak published a rejoinder in which he reviewed his whole career. In the course of this letter Tilak said, "My views on political and social matters are well-known to the public. The charge against me is that my activity and propaganda are one-sided. I do not hold that social reconstruction must be undertaken prior to political emancipation. I attach greater importance to the latter." Speaking of the Kesari he said, "It is true that I made it an organ exclusively of political propaganda. I do not deny it, but at the same time let me point out that the political awakening in Maharashtra since then is more the work of this paper and my party than Mr. Paranjpye and the men of his ilk."

Before concluding this part of the case it is necessary to refer to an aspect of the matter arising out of our summary of the Lokmanya's activities which he pursued through the two newspapers. It would be seen that he was wholly concerned with achieving the intimate association of the people and their representatives in the administration and governance of the country, and if possible, the entire elimination of foreign rule altogether, and the two newspapers were utilised for educating and rousing people to achieve these. What Tilak's policy or activities would have been after complete independence had been achieved and the policy which he would have the papers pursue subsequently is an interesting question, but one which we consider not relevant for the determination of the question before us. What we are concerned with is as regards the object which Tilak sought to achieve by conducting these newspapers, and to perpetuate which the trust was founded.

The survey, though very inadequate of the public life and activity of the Lokmanya in particular relationship with the two newspapers undoubtedly show that his purpose in taking over and conducting the newspapers was clearly political, in the sense of seeking to achieve by means of rousing the consciousness of the people to their condition, a political awareness, by which adjustment of a political character would be demanded and enforced by the persons who imbibed those truths or were influenced by such writings.

The next question to be considered is whether a political purpose, i.e., for educating people not on theories of political or social sciences as a subject of academic study, but for moving them to practical action to achieve governmental changes is or is not a charitable purpose. There was some debate before us as to the import of the expression "charitable" and arguments were addressed in particulars to the exact point of difference between the concept of charity under the English Law and that under the Indian Law. No doubt, as pointed out by Lord Wright in *Chichester Diocesan Fund & Board of Finance (Incorporated) v. Simpons* [(1944) A.C. 341, 353] the term "charity" has not, in England, always had a precise connotation. What constituted a charitable purpose has there been derived from the preamble of the Act 43 Elizabeth I Ch. IV (1601) which was taken to signify those purposes which would be held to be charitable. It is not necessary for us to set out the objects

enumerated in that preamble but it was always considered that that list was not exhaustive though to decide whether a purpose was in law charitable or not, it has been the practice of the English Courts to refer to that preamble. In these decisions besides the objects there enumerated, others which by analogy were deemed to be "within the spirit and intendment of that statute" have been held to be charitable in the legal sense. Ever since however the judgment of Lord Macnaghten in *Commissioners for Special Purposes of Income Tax v. Pemsel* [(1891) A.C. 531] the expression "charitable purpose" has been understood to comprise four main heads : (1) relief of poverty, (2) advancement of education and learning, (3) advancement of religion, and (4) other purposes beneficial to the community or the advancement of objects of general public utility. As regards the last clause, Lord Macnaghten expressed the view that under English law there might be some purposes of general utility which might be charitable and some which might not be, the true test being whether the particular purpose was within the spirit and intention of the statute of Elizabeth. Whether the concept of charity under Indian law is or is not wider than what Lord Macnaghten considered to be the scope of charitable purpose in England does not really arise for consideration in the case before for us, we are bound by the terms of s. 9 of the Act which has defined the several categories into which a charity might fall.

It was not the contention of the respondent that the trust-deed constituted a charity under any other head than that of the fourth clause of s. 9 viz., "the advancement of any other object of general public utility." In saying so what we desire to point out is that it was not the contention of the respondent that by the reference to "political education" in cl. 1 of the Trust-deed, the charity was one for the advancement of "education" within s. 9(2). It would be seen that ultimately the question to be decided is whether the achievement of a political purpose, in the sense of arousing, in people the desire and instilling into them an imperative need to demand changes in the structure of the administration and the mechanism by which they are governed, could be said to be the "advancement of an object of general public utility." Having regard to the very limited nature and scope of the question before us it is not necessary to consider the precise points of the difference between the English law as understood by Lord Macnaghten and that which finds place in the Indian statutes dealing with the relevant topic. We say this because we have judgments of the Privy Council construing the terms of s. 4 of the Indian Income-tax Act of 1922 in which enactment the purposes which are comprehended within the expression "charitable" are defined in exactly the same manner as we find in s. 9 of the Act now in question and where in particular, the learned Judges had to consider the question whether the achievement of a political purpose, as we have explained earlier, was a charitable purpose.

Before however referring to the Privy Council it would be of advantage if we refer briefly to the decisions in England which have taken the view that if a purpose were political it is not charitable i.e., it does not advance an object of general public utility. The earliest case to which we need make reference is the decision of Rowlatt, J., in *Commissioners of Inland Revenue v. The Temperance Council* [(1926) 10 Tax Cas. 748]. It arose out of a claim by the Temperance Council for exemption from payment of income-tax in respect of the income and dividends derived by the Council, on the ground that the Council was established for charitable purposes only. The purpose of the Council was "by united action to secure legislative and other temperance reform." Dealing with this claim the learned Judge said :

"The work of the Council, it was provided, was to be a of strictly non-party character. That is a wholly irrelevant consideration. When it has been said that a political purpose is not a charitable purpose, that conclusion is not relevant, because political purposes are or may be purposes mixed up with party politics; the word 'political'

does not mean that in the connection at all."

The learned Judge went on to state that the object of the trust being to secure a certain line of legislation, it would not be a charitable trust.

Bonar Law Memorial Trust v. Commissioners of Inland Revenue [(1933) 17 Tax Cas. 508] is the next case to which reference might usefully be made. The donee under the trust was the Chairman, on the date of gift, of the central office of the Conservative Party and the fund was donated by an oral trust and a deed was executed after the death of the donor to secure the objectives with which the donor had made the gift. The objects were, inter alia, to honour the memory of Bonar Law (a former leader of the Conservative Party), "to preserve a historical building from destruction and to use it as a college for the education of persons in economics, political and social science, etc., with special reference to the development of the British Constitution, and in such other subjects as the governing body might deem desirable." The intention of the governing body was to educate students in political principles and to exclude propaganda in support of a particular party, and students were admitted to the college without any reference to their political beliefs or inclination. It was, however conceded that the governors of the college and the members of the education committee were wholly composed of members of the Conservative Party and that lectures were given on the conservative party organisation but not on Liberal or Socialist organisation. The question before the Court related to the claim of this trust for exemption under the Income Tax Act. Finlay, J., in rejecting the claim of the trust to the exemption, observed :

"It is necessary to ascertain exactly, as far one can, what the question to be decided here is. It was suggested by Mr. Needham that a trust for the promotion of Conservative principles would be a good charitable trust. I am not prepared to hold that. In my opinion, there is no authority which has gone as far as that. It is true that Stirling, J., in the case of Scowcroft [[1898] 2 Ch. 638] left the matter open, but, in my opinion, on the present position of the authorities and also, as I think, on the principle of the thing, it is impossible to hold that a trust which is simply a trust for the propagation of the political principles of a particular party is a good charitable trust."

The learned Judge then extracted a passage from the judgment of Russell, J., in *In re Tetly* [(1923) 1 Ch. 258, 262] reading :

"Subsidising 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 funds for a charitable purpose."

Scowcroft's case which is referred to by Finlay, J., is reported in [1898] 2 Ch. 638. Under a will a particular property was devised to be set apart "to be maintained for the furtherance of Conservative principles and for religious and mental improvement and to be kept free from intoxicants and dancing". The case before the Court arose on an originating summons taken out by the trustees of the will to determine the validity of the devise. It was urged in support of the summons, by Counsel who disputed the validity of the disposition that a gift in furtherance of Conservative principles was not a good charitable gift and that as it was impossible to say how much to be devoted to the advancement of the Conservative cause and how much to religious and mental improvement, the purpose was vitiated and the entire devise was void. On the other hand, it was the contention on

behalf of the Attorney-General that the bequest for a religious purpose was good and was not vitiated by being associated with or intended to promote any particular views, unless such views be illegal or immoral. It was further urged on his behalf that the gift before the Court was not one merely for the furtherance of Conservative principles but for Conservative principles and religious, and mental improvement, i.e. for religious and mental improvement in connection with Conservative principles and that looking at the substance of the gift they were really and principally for the mental and moral improvement of the villagers, and not being in, validated by the tinge of Conservative principles, were good and valid charitable gifts. Stirling, J., accepted this submission of the Attorney General in support of the validity of the trust. The learned Judge said:

"Whether or not a gift for the furtherance of Conservative principles is a good charitable gift is a question upon which I do not think it necessary to express any opinion in this case, because it seems to me that the reading which is suggested is not the true one, but that this is gift for the furtherance of Conservative principles and religious and mental improvement in combination. It is either a gift for the furtherance of Conservative principles in such a way as to advanced religious and mental improvement at the same time, or a gift for the furtherance of religious and mental improvement in accordance with Conservative principles; and in either case the furtherance of religious and mental improvement is in my judgment, an essential portion of the gift. 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 Tetley [[1923] 1 Ch. 258, 262], referred to by Finlay, J., in Boner Law Memorial Trust case [(1933) 17 Tax. Cas. 508], was concerned with the validity of a bequest under which the trustees were directed to apply property "for such patriotic purposes or objects and such charitable object or objects in the British Empire as they in their absolute discretion should select". The Court of appeal affirming a judgment of Russell, J., held that a patriotic purpose might not necessarily be charitable and therefore the bequest was void. Dealing with the head of "Charity" relating to "trusts for purposes beneficial to the community" Warrington, L.J., said :

"You inquire what the divisions of charities are, and you come to the conclusion that there is one miscellaneous set of charities which can be classed under that head; but to state that from that the notion that every purpose of general use to the community must be a charity is just about as logical as to draw from a statement in the report of an insurance society that 'persons insured with us may be divided into men, women, and children' the deduction that every man, every woman, and every child is insured in that society. It seems to me, therefore, that it is open to us to say, that merely because a trust may be said to be for the general use of or for some purpose beneficial to the community is not necessarily confined to 'charitable purposes' in the legal acceptance of that term.....Expression 'patriotic purposes' even if it be confined to purposes beneficial to the State, is not necessarily confined to charitable purposes, and a gift for 'patriotic purposes' is therefore so uncertain as to be void."

The position is summarised in Halsbury's Laws of England [3rd Edn., Vol. 4, para 523 - the title being contributed by Danckwerts, J.] thus :

"A trust for the attainment of political objects is 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 or will not be for the public benefit, and therefore cannot say that a gift to secure the change is charitable gift."

The law, as stated here, is an extract from the judgment of Lord Parker in *Bowman v. Secular Society, Ltd.* [[1917] A.C. 406, 442].

We shall now turn to the decisions of the Privy Council in appeals from which bear upon the question as to whether a trust created for a political purpose or with a view to attaining political objects could be held to be a charitable trust within the meaning of the words "the advancement of an object of general public utility". In the *Trustees of the Tribune Press, Lahore v. Commissioner of Income-tax* [[1939] L.R. 66 I.A. 241] the court was concerned with the claim to exemption under s. 4(3) of the Indian Income-tax Act which, as we have pointed out earlier, is for purposes relevant in the present context, identical with s. 9 of the Act. The exemption was claimed by the Trustees of the Tribune Press under a Trust which directed them "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.....in improving the said newspaper and placing it on a footing of permanency." It might be mentioned that evidence was placed before the Privy Council of selected issues of the newspapers which threw light on the character and the policy of the paper in lifetime of the founder as explanatory of the direction contained in the words "keeping up the liberal policy of the said newspaper". The reference under s. 66(2) of the Income-tax Act came before a Division Bench of the Lahore High Court and as the learned Judges were divided in their opinion, the question was referred to full bench of three Judges and by a majority the learned Judges held that the income of the trust was not exempt. It was from this judgment that the trustees preferred the appeal to the Privy Council. Sir George Rankin who delivered the judgment of the Judicial Committee first rejected an argument which sought to sustain the charitable nature of the trust by a contention that the trust might be regarded as of an educational character, the submission being that the establishment and maintenance of an efficient newspaper catering to the needs of a populous district where there was need for such a paper fell within such a purpose. The next point that was urged had been that the property was held under a trust for "the advancement of an object of general public utility". The learned Judge pointed out that the statutory law in India had for a long number of years and in several instances defined "charity" in the way which it had been found in Indian Income-tax Act with which they were concerned. Two of the learned Judges of the High Court had expressed an opinion that on the question whether a particular object or purpose was of general public utility, the true test was not what the Court considers to be beneficial to the public, but what the testator or the author of the Trust considered to be so. This view was dissented from and it was pointed out if this were accepted trusts might be established in perpetuity for the promotion of all kinds of fantastic (though not unlawful) objects. The Court had therefore a responsibility in the matter in coming to a decision as to the object of the trust and to discover whether it satisfied the statutory test of "advancing general public utility." The Judicial Committee expressed its assent to the view that an eleemosynary element was not essential for a use being a charitable and so the fact that the newspaper was not given free to its subscribers, but only sold them for a price did not detract from the trust being charitable. Sir George Rankin then dealt with the main objection that was taken to the trust not being charitable and that was on the ground that the Tribune newspaper was intended by its founder to carry on political propaganda and was intended to be devoted to the advocacy of particular legislative measures considered by its founder to be measures of reform, and it was this political character which the respondents contended prevented the trust from being held

to be an "object of general public utility". After referring to the various English decisions to most of which we have ourselves referred, the learned Judge proceeded :

"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."

He pointed out that it was not suggested by the Commissioner of Income-tax that the newspaper was intended to be a mere vehicle of political propaganda but was to be an instrument for the dissemination of news and for the ventilation of opinion upon all matters of public interest, and recorded his conclusion that questions of politics and legislation were discussed in the paper only as many other matters were discussed and that it had not been made out that a political purpose was the dominant purpose of the trust. He summarised the position stating that the object of the paper might 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 evidence before them as to the contents of the paper it was not a newspaper intended for the promotion of particular political or fiscal opinions."

The next case to which we desire to make a reference is the decision in *All India Spinner's Association v. Commissioner of Incometax* [(1944) L.R. 71 A.I. 159]. As the cause title itself would indicate, the point in dispute also related to whether the Association was entitled to exemption in respect of its income under s. 4(3)(i) of the Income-tax Act. The Commissioner of Income-tax who made the reference to the High Court under s. 66(2) of the Income-tax Act of the question whether the income of the Association was liable to income-tax and to super-tax, expressed his opinion that the dominant purpose of the Association was political because of the intimate connection between the Association and the Indian National Congress and besides that the manner in which the Association carried on business was in no way different from the activity of a trading concern. The High Court of Bombay answered the question in favour of the Revenue. The reason for this holding was that though the object of the Association was "the relief of the poor", still the income which was being assessed to tax was not derived from "property held under a trust for a religious or charitable purpose". There was no property as such from which the income was derived but the profits arose out of the sum total of the activities of the Association, i.e., out of the business carried on by it and the fact that one of the objects was the relief of poor would not render the income derived exempt from tax. Quite a different and for our purposes a more relevant ground on which the case for revenue was rested was the aim of the association to afford relief to the poor, was coupled with another object of the trust which was the prevention of the importation of foreign cloth into India and, as the Association was created with a view to assisting the All India Congress it was contended that therefore it had a political object. On appeal to the Judicial Committee, Lord Wright who delivered the judgment of the Board observed :

"They hold that the income sought to be assessed is income derived from property held under a trust or other legal obligation wholly for religious or charitable purposes.....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 on definite and precise statutory provisions. They have been developed in the course of more than three centuries by 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.....The difference in language in s. 4(3) from Macnaghten's classification and particularly the inclusion in the Indian Act of the word 'public' instead of the word 'community' 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.....The statement of the object excludes any question of profit making, and also excludes any element of party politics. Any participation in political propaganda would be ultra vires.....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 are not actively engaged in agricultural operations.....The primary object of the Association was thus the relief of the poor.....There is good ground for holding that the purposes of the Association included the advancement of other purposes of general public utility.....There exact scope may require on other occasions very careful consideration.....Though the connection of the Association with the Congress was relied on as inconsistent with general public utility because it might be for the advancement primarily of a particular party, it is sufficiently clear that the Association's purpose were independent of, and were not affected by, the purpose or propaganda of Congress."

On this reasoning the appeal of the Association was allowed.

We consider that these two decisions of the Privy Council in so far as they hold that a political purpose, in the sense of a propaganda for the achievement of a political objective, is not a charitable purpose, i.e., not one for the advancement of an object of general public utility correctly interpret the Indian statute and the law in India. Whatever difference there might be between the definition of "charity" and "charitable purposes" in the English and Indian law, we consider that there is none so far as regards "political purposes" in the sense in which we have indicated earlier. In this context, it is significant that *Chichester Diocesan Fund etc. v. Simpsons* [(1944) A.I. 341, 353], in which Lord Wright speaking in the House of Lords ex-pounded the uncertainties of the English law as to the meaning of "charity" and the appeal of the *All India Spinners Association* [[1949] 1 All. E.R. 346] before the Judicial Committee were heard at about the same time, and in consequence the view of Lord Wright expressed in the latter decision that a political purpose is not an object of general public utility even on the wider language of the Indian statute reinforces our conclusion on the point. Even though the concept of charity under the Indian Law might be wider than as understood in England, particularly under the residuary head "advancement of an object of general utility", we consider that it would not include a "political purpose" in the sense indicated already.

The latest case on the point to which we would like to refer is a decision of Vaisey, J., in *Re Hopkinson : Lloyds Bank Ltd. v. Baker* [(1944) L.R. 71, I.A. 159] for the reason that the learned Judge refers to all the earlier English cases to which we have already adverted as also to the decision of the Privy Council in the Tribunal case. The purpose of the trust as recited in the bequest was the creation of "an educational fund to be utilized at the absolute discretion of the trustees for the advancement of adult education with particular reference to the following purpose (but without

limiting their discretion in applying the fund to adult education), that is to say, the education of men and women of all classes on the lines of the Labour Party's memorandum headed "A Note on Education in the Labour Party." Vaisey, J., held that the direction to the trustees to have particular reference to the memorandum of the Labour Party dominated the whole trust, forming its overriding and essential purpose which rendered the trust as one for the attainment of political objects and was not, therefore, charitable. The learned Judge pointed out :

"Political propaganda masquerading, using the word not in any sinister sense, as education is not charitable",

and went on to add :

"The principle that legitimate and proper political aims and ambitions are not charitable is far too well settled for me at this stage to attempt to apart from or refine upon it. I wish to make it clear that the purpose indicated in this memorandum and the purpose indicated by reference thereto in the testator's will are lawful, legitimate, and, from the point of view of those who put them forward, wholly desirable and proper, but they are not charitable. The law has been laid down with charity over a long period of time, and, if the trust is not charitable, it is one which the court cannot uphold. The reason for that, I think, is partly indicated in what was said, also by Russell J., in *Re Hummeltenberg* [[1923] 1 Ch. 237], viz., that, if the trust is one which the court could not administer if the trustees disclaimed their duties thereunder it would be a trust which could not be supported in law....."

The decision in *Scowcroft*, (4a) the learned Judge observed, did not impinge upon, or limit the effect of, the general proposition to which he referred. He concluded by saying that there could be no doubt that the testator's object was, not education in the proper sense of that word, but the furtherance of his political views and the better equipping of those who make it their business to further them.

We are clearly of the opinion that a "political purpose" is not a charitable purpose as being one "for the advancement of any other object of general public utility" within s. 9(4) of the Act.

To summarise the position :

- (1) The object for which "The Kesari & Mahratta Trust" was established was the achievement of a single purpose, viz., to continue in perpetuity the activity for the fulfilment of which Lokmanya Tilak took up the two newspapers.
- (2) The specification in cl. 1 of the Trust-deed that these activities were "directed to the spreading of political education through the newspapers and hereby making people alive to their political rights" was intended to describe the object of the Lokmanya in taking up the newspapers and correctly described the same, as seen from the public life and activities of Tilak, particularly in the matter of his conduct of the two newspapers.
- (3) The two newspapers were designed by the Lokmanya to be the vehicle for educating the mass of the population to a sense of the grievances suffered by them under foreign rulers, with a view to rouse them to political action and demand a share in Government. He was a full-time politician. At a time when Indian men of learning

were eulogising British rule and the masses were inert and lethargic and oblivious to their degradation Lokmanya, by his propaganda and leadership sought to infuse into the minds of the masses self-respect and courage. By his writings in these papers, Tilak demonstrated to the people that the foreign rule rested on no moral foundation and when he made people realise this, the achievement of freedom became assured. That is why Tilak has been aptly termed the father of India's freedom struggle.

(4) The life mission of Lokmanya which he sought to achieve and achieved through the two newspapers, and which is set out in the trust-deed as the object for which the trust was founded was therefore a political purpose.

(5) A political purpose is not charitable under s. 9 of the Act and hence, the Trust was not required to be registered under s. 18 of the Act, and the order of the Assistant Charity Commissioner confirmed by the Charity Commissioner, directing the Trust to be registered was erroneous and should have been set aside by the District Court of Poona in Miscellaneous Application No. 325 of 1954.

The appeal is accordingly allowed and the order of the Assistant Charity Commissioner directing the Trust to be registered confirmed by the Charity Commissioner on appeal is set aside. The appellants will be entitled to their costs in all the Courts.

SUBBA RAO, J. –

I have had the advantage of persuring the judgment prepared by Rajagopala Ayyanger, J., and I regret my inability to agree. The facts are fully stated in the judgment of my learned brother and I need not restate them here, except to the extent necessary for appreciating the question raised in this case.

Bal Gangadhar Tilak executed a will on April 5, 1918, and died on August 1, 1920. On August 16, 1920, his two sons and the executor appointed by him under the will executed a trust deed, Ex. 12, in respect of two newspapers "The Kesari" and "The Mahratta", and the property and the machinery pertaining thereto. The question is whether the trust created under the said document is a public trust within the meaning of the Bombay Public Trusts Act, 1950 (Bombay Act XXIX of 1950), hereinafter called the Act. The material provisions of the Act read :

"Section 2. (13) 'public trust' means an express or constructive trust for a public, religious or charitable purpose or both and includes a temple, a math, a wakf, a dharmada or any other religious or charitable endowment and a society formed either for a religious or charitable purpose or for both and registered under the Societies Registration Act, 1860."

"Section 9. For the purpose of this Act, a charitable purpose includes -

(1) relief of poverty or distress,

(2) education,

(3) medical relief, and

(4) the advancement of any other object of general public utility but does not include

a purpose which relates -

(a) exclusively to sports, or

(b) exclusively to religious teaching or worship."

The Bombay High Court held that the purposes of the Trust were, (1) awakening in the minds of the people a consciousness of their political rights by spreading the knowledge of politics through the newspapers "The Kesari" and "The Mahratha", and (2) organizing various public movements calculated to promote the national ideal; and held that the first was a charitable purpose and the second was not. As the Charity Commissioner, Bombay, did not file any appeal questioning the finding of the Bombay High Court in so far as it went against him, I shall assume the correctness of the said finding and proceed to consider whether the first purpose is also not a charitable purpose as is contended before us on behalf of the appellants.

Before doing so, it would be convenient to consider the scope of s. 9(4) of the Act, for it is agreed that the trust is not covered by the other clauses of the section. It is common place to observe that where the language of an Act is clear and explicit, we must give effect to it for the words of the statute speak the intention of the Legislature. When the words of a statute are unambiguous, it would be safe to consider them without reference to cases. The words of cl. (4) of s. 9 of the Act are of the widest amplitude and are free from any ambiguity. The key-words are "general public utility". "General" means pertaining to a whole class; "public" means the body of the people at large, including any class of the public; "utility" means usefulness. Therefore, the advancement of any object of usefulness or benefit to the public or a section of the public, as distinguished from an individual or group of individuals, is a charitable purpose. The clause excludes expressly two purposes, namely, a purpose which relates exclusively to sports and a purpose which relates exclusively to religious teaching or worship, from the purposes mentioned in cl. (4) indicating thereby that all objects of general public utility, except those expressly excluded therefrom, are included in the general words used in cl. (4). Whenever a question arises whether a particular purpose is a charitable one within the meaning of that clause, one has to ask the question whether its object is to benefit the public.

Before I consider the English case-law developed in the peculiar circumstances of that country, which is more likely to obstruct than to clear the path of construction of an Indian statute, let me look at the terms of the trust deed to ascertain whether the purpose of it was one of general public utility as indicated above.

The relevant part of the trust deed reads :

"This trust deed is made as a means to the fulfilment perpetually and uninterruptedly after the death of late Lokmanya Bal Gangadhar Tilak of that very object of his with which he took up all activities, after he took charge of the newspapers "The Kesari" and "The Mahratta", such as of spreading national education through those newspapers and thereby making people alive to their political rights and carrying on other multifarious public activities conducive to the national ideal etc.

I am omitting for my consideration the last clause of the trust deed, namely, "carrying on other multifarious public activities conducive to the national ideal etc.", as the High Court has held that that clause does not indicate a charitable purpose and there

is not appeal by the respondent against that finding. I should not be understood to have expressed any view on the correctness of that finding. The opening words show that the trust-deed was executed for "the fulfilment perpetually and uninterruptedly the object of late Bal Gangadhar Tilak." The adverbial phrase "perpetually and uninterruptedly" indicates beyond any reasonable doubt that the object was not a temporary one but was such that it should be carried on for ever. This excludes any idea that the object was merely to replace the British Government by an Indian Government, for, in that event, the object would come to an end with the achievement of independence. The object, therefore, must be something higher than a mere change of political power from the British to the Indian hands. The next part of the trust deed gives a clue to the scope of the object. The activities mentioned therein reflect the content of the object. The activities mentioned are those that Bal Gangadhar Tilak carried on after he took charge of the newspaper "The Kesari" and "The Maharatta." The nature of the activities is indicated and it is the spreading of national education through those newspapers and thereby making the people alive to their political rights. The words "such as" indicate that the said activity is not exhaustive of the object of Bal Gangadhar Tilak, but is only illustrative of the activities. The question, therefore, is whether the activities, such as spreading thereof, is whether the activities, such as spreading of national education through the newspapers and of national education through the newspapers and thereby making the people alive to their political rights, are of charitable nature within the meaning of s. 9(4) of the Act. It may be mentioned that learned counsel for the appellants argued that the words "national education" do not correctly represent the expression in Marathi language and that he would like us to read in the place of "national education" the words "political education". In the High Court this translation has been accepted as the correct one and it is not advisable or proper for this Court to allow the counsel to question at this stage the correctness of the said translation. India is a multilingual country and appeals come to this Court from different areas speaking different languages. The Judges of this Court do not understand all the languages. In the circumstances ordinarily this Court shall accept the official translation as correct. The expression "national education" excludes the idea that the said education is intended to cover, or confined to, any particular group. A nation can be educated in different ways and one of the ways is certainly by spreading ideas through well conducted newspapers. While "The Mahratta" published in English may reach only the intelligentsia, "The Kesari" published in Marathi may enlighten the uneducated people - I am using this word in the limited sense of people who are not educated in English - spread over the innumerable villages of the Marathi speaking area. The nature of the education sought to be so imparted is described as one to make the people alive to their political rights. To make the people conscious of their political rights is not the same thing as to indoctrinate them in the ideology of a particular political party. Political rights have been defined in *Corpus Juris*, Vol. 49, p. 1076 thus :

"Those which may be exercised in the formation or administration of the government; the power to participate, directly or indirectly, in the establishment or management of the government; those rights which belong to a nation, or to a citizen, or to an individual member of a nation, so distinguished from civil rights, namely,

local rights, of a citizen."

In Cyclopedic Law Dictionary, 3rd Edn., the meaning of the expression "political rights" is given as follows :

"A political right is a right exercisable in the establishment or administration of government, while a civil right is a right accorded to every member of a distinct community or nation with reference to property, unity or nation with reference to property, family or marriage, and the like. Political rights consist in the power to participate, directly or indirectly, in the establishment or management of government."

Political rights, therefore, are not rights pertaining to any particular political party. They are rights of every citizen irrespective of his party affiliations, which he is entitled to exercise in the formation or administration of a government. In the context of a modern state, education in political rights may include diverse aspects of it, such as, political, economical social etc. It is the fundamental of any good government of a State that the people belonging to that State shall know their political rights. The importance of the said education has no relation to the form of government existing at a particular time. It is important both in a self-governing State as well as in a colonial State. Unless the people know their rights, they cannot work either for their freedom or elect proper persons to represent them after attaining freedom. No education is more important than political science, for not only good government but also the maintenance of independence, to a large extent, depends upon the political consciousness of the people of a particular State. If that be so, I find it impossible to say that spreading of national or even political education to make people conscious of their political rights is not an object of general public utility within the meaning of s. 9(4) of the Act. It is said that the activities of Tilak were subversive in character and were directed to change the form of government, that is, to replace the foreign government with a national government; that his object was to break law and, therefore, was not a charitable one. This argument does great injustice to Tilak, who was on all accounts a great patriot of his days. No material has been placed before this Courts to characterise him as a political opportunist or a person whose sole object was to wrest the political control from the British Government by any means foul or fair. Indeed he has now become a historic figure and in the absence of any material before us, I think I am justified in looking into some reputed book on the life of Tilak.

In Tahmankar's "Lokamanya Tilak" the objects with which the newspapers "The Kesari" in Marathi and "The Mahratta" in English were started are given thus at. p. 26 :

"It was in order to lay the corner-stone of a future revolution that Tilak and his co-workers decided to launch two newspapers, the Kesari, written in Marathi, and the Mahratta in English. The prospectus, published in 1880, boldly declared that Kesari would deal comprehensively with political and economic conditions in the country, carry objective literary reviews of new works in Marathi, and would particularly emphasize and spotlight the course of world events and politics."

In the leading article of the first issue of Kesari dated January 4, 1881, it was stated, referring to Britain, thus :

"In that country, through the powerful medium of the Press, a vigilant eye is kept on the public conduct of every functionary from the highest to the lowest - from the

Prime Minister to the pettiest civil servant - which has enabled the British to enjoy a reasonable guarantee that no case of injustice should long remain concealed and unexposed."

The editor of the newspaper also declared his intention to try to improve social conditions by frankly telling the people what was evil and harmful in their way of life. The same author defines briefly the object of the two newspapers thus at p. 27 :

"Kesari was to cater for the needs of the mass ignorant population, who have generally no idea of what passes around them and who therefore must be given the knowledge of such topics as concern their everyday life by writings on literary, social, political, moral and economic subjects. The Mahratta, on the other hand, kept in view the more advanced portion of the community, who require to be provided with material for thinking intelligently on the important topics of the day. The tone and temper of Kesari were democratic; its aim was popular education and public agitation. The Mahratta was to serve as the authoritative organ of educated public opinion in Maharashtra. It discussed comprehensively every question of high politics, and offered its readers a selection of the views of foreign and Indian journals and publicists on the questions of the day."

Though Tilak was in the beginning closely associated with the papers, later on he took over the editorship of both the newspapers and became their sole proprietor. The author describes how the papers were moulded in the hands of Tilak, at p. 39 :

"Kesari was produced not to entertain the people, but to instruct and guide them. It was a newspaper for the people and its purpose was to make them think and act. Tilak was an editor-philosopher who had a message to give to his readers and he gave it with fire and imagination. There was nothing meekly-mouthed about his writing. In a downright, frank and robust style week after week Tilak poured out his soul on day-to-day problems, economic questions, philosophical ideas, historical researches, literature and art."

Tilak was a great savant. He lived and worked when India was a servile country. He had a great vision and that was India as a united, strong, prosperous, civilized and democratic country. He was not a person embroiled in party-politics, trying to build up a political career for himself. He lived, worked and died for a national cause. His activities and ideals were mostly, though not wholly, reflected in the two newspapers, "The Kesari" and "The Mahratta", two leading newspapers of the day which propagated his views not only throughout the Marathi speaking part of the country but also in other parts thereof. Through his papers, he gave information on various subjects, literary, political, social, moral, economic, etc. His papers created an atmosphere for constructive work in that part of the country and elsewhere, and supported many movements calculated to improve the conditions of the people. Subjects as varied as famine relief, prostitution, swadesi, plague relief, Bengal partition, Home-rule movement, national integration, and such other political and social movements, found powerful expression in the said newspapers. In short, his papers pleaded for the social, political, cultural and economic regeneration of the country. They were not confined to the narrow ideal of just replacing the foreign government by a national one, though it was an important step in the regeneration of the country.

Can the objects of this great man, reflected, propagated, and pursued by the said papers, be

characterized as those not in the general public interest ? To say that the object of a trust for a village school, hospital or choultry in one of general public utility and to deny that character to a trust created for pursuing the objects of Tilak, that is, the regeneration of the country is to make a mockery of the section. What trust could be more in the interest of the public than that created to educate them in their political rights so that they could know their rights, understand and appreciate the problems of their country, and contribute their mite to its progress and prosperity ?

It is said that Tilak was a leader of only one of the parties and his activities were analogous to those of a leader of a political party in England. It is true that in the days of Tilak there were also patriotic gentleman who preferred to achieve independence by a circuitous and slow path and there were also selfseekers who built up their career on the sacrifices of their fellow citizens. But then there were no political parties in the sense they are in England and are now in India. Tilak was not an ordinary politician indulging in party politics to build up his career. His lifetime was spent in educating the people with a view to realise his vision. To class him as a party politician with a view to import the English law in the construction of the trust deed is, to say the least, to ignore the facts of history and to belittle the great contribution made by Tilak in the country's cause. His work must be evaluated not on party but on a national level. It is, therefore, clear that the object of Tilak, after he tookover the newspapers, was to work for the regeneration of the country, and he thought, and rightly too, that national education through newspapers and thereby making people alive to their political rights was the most important item in the uplift of the country. The trust executed to perpetuate the said object is clearly a trust for general public utility within the meaning of s. 9(4) of the Act.

But it is said that the object are not of public utility, because some of the English Judges - for whom I have the greatest respect - said that political purposes are not charitable purposes. Ordinarily I would have been inclined to drop any reference to English decisions had it not been for the copious citations at the Bar. I would, therefore, briefly notice the decisions cited at the Bar defining "charitable purposes" under the English law on the basis of which an attempt is made to curtail or circumscribe the scope of cl. (4) of s. 9 of the Act. In this connection it is necessary to bear in mind the caution administered by the decisions of highest authority when similar attempts were made to import English law in the matter of construction of Indian statutes. In *All India Spinners' Association of Mirzapur, Ahmedabad v. Commissioner of Income-tax* [(1944) L.R. 71, I.A. 159, 166, 167], the Judicial Committee had to consider the scope of s. 4(3)(i) of the Indian Income-tax Act. In that decision, Lord Wright, speaking for the Board, observed :

"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 on definite and precise statutory provisions. They have been developed in the course of more than three centuries by the Chancery Courts."

After pointing out that in the English law the purpose beneficial to the community are charitable whereas under the Indian statute the advancement of any other object of general public utility is a charitable purpose, proceeded to state :

"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 held 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.

The Judicial Committee again in *Williams Trustees v. Revenue Commissioners* [[1948] 16 I.T.R. Suppl. 41] reiterated the same principle with greater emphasis.

With this background let me briefly notice the English law on the subject with a view to ascertain whether they would afford any help or guidance for construing the statutory provisions of the Act. The English law of charity has grown round the Statute of Elizabeth (43 Eliz c. 4) and the preamble thereto read as follows :

"The relief of aged, impotent and poor people; the maintenance of sick and maimed soldiers and mariners; the maintenance of schools of learning, free schools and scholars in universities; the repair of bridges, ports, havens, causeways, churches, sea-banks and highways; the education and preferment of orphans; the relief, stock or maintenance of houses of correction; the marriage of poor maids; the supportation, aid and help of young tradesmen, handicraftsmen, and persons decayed; the relief or redemption of prisoners or captives; the aid or ease of any poor inhabitants concerning payment of taxes; the setting out of soldiers."

Sir Samuel Romilly in his argument in *Morice v. Bishop of Durham* [(1805) 10 Ves. 522, 532; 32 E.R. 947] attempted to classify the said objects under the following heads "Relief of the indigent, the advancement of learning, the advancement of religion, and the advancement of objects of general public utility." But Lord Macnaghten in *Commissioner for Special purpose of Income Tax v. Pemsel* [(1891) A.C. 531, 583] did not adopt this classification but instead grouped the purposes which have been held charitable within the language of the aforesaid preamble under the following four heads : (1) relief of poverty; (2) advancement of education; (3) advancement of religion; and (4) other purposes beneficial to the community not falling under any of the preceding heads. It will be at once noticed that s. 9(4) of the Act accepted the last head suggested by Sir Samuel Romilly in preference to the fourth head enumerated by Lord Macnaghten which has been the basis for the decisions which I will consider immediately. The case law on the subject is immense : it is impossible to discover any common thread passing through them. But I shall content myself with noticing decisions relating to trusts created to promote what is broadly described as the advancement of political objects. A brief summary of the English decisions shows not only an irreconcilable conflict but also the danger of importing them in the construction of an Indian statute. The following purpose have been held to be non-charitable purposes :

(1) To secure by united action legislative and other temperance reforms : vide *The Commissioners of Inland Revenue v. The Temperance Council of the Christian Churches of England & Wales* [(1926) 10 Tax Cas. 748].

(2) To subsidize a newspaper for the promotion of particular political or fiscal opinions : vide *National Provincial and Union Bank of England Ltd. v. Tetley* [[1923] 1 Ch. 258].

(3) To honour the memory of a great statesman, a former leader of the Conservative Party to preserve a historical building from destruction and to use it as a college for the education of persons in economics, politics and social science, etc. with special reference to the development of the British Constitution, and in such other subjects as the governing body by whom the Trust was administered might deem desirable : vide

Bonar Law Memorial Trust v. Commissioners of Inland Revenue [(1933) 17 Tax Cas. 508].

The following purposes have been held to be charitable purposes:

- (1) Financing a Bill before Parliament to establish a see at Birmingham : vide *In re Villiers Wilkes* [(1895) 72 L.T. 323].
- (2) Combating vivisection partly by the repeal of a statute : vide *In re Foveaux* [(1895) 2 Ch. 501].
- (3) Maintenance of village club and reading room "to be used for the furtherance of Conservative principles and religious and mental improvement, and to be kept free from intoxicants and dancing" : vide *In re Scowcroft* [(1898) 2 Ch. 638].
- (4) For the benefit of a particular place, whether a parish, town, or borough, a county, or a country : vide *Public Trustees v. Smith* [(1932) 1 Ch. 153].

In Halsbury's Laws of England, 3rd Edn., Vol. 4, the following summary is found at p. 231 :

"The promulgation of particular doctrines or principles not subversive of morality or otherwise pernicious and not in furtherance of the principles of a particular political party may be charitable, as, for instance, Conservative principles combined with mental and moral improvement, Socialism, kindness to animals, or temperance, or extending the knowledge of those doctrines in the various branches of literature to which I have turned my attention and pen, in order to ascertain what appeared to be truth, and to teach it to those who would listen."

A cursory glance at the said illustrations would be enough to indicate that there was no consistent principle underlying them; the decisions speak in different voices. Some decisions attempted to lay down certain principles, but no sooner were they laid down than they were given up by subsequent decisions in a search for others. The following principles may be called out from some of the aforesaid decisions :

- (1) A trust is charitable only if it is within the spirit and intendment of the preamble to the Statute of Elizabeth.
- (2) Every object of public general utility is not necessarily charitable : see *Williams Trustees v. Inland Revenue Commissioners* [(1948) 16 I.T.R. Suppl. 41].
- (3) A trust for changing the law of the country is not charitable.
- (4) As it is a maxim that the execution of a trust shall be under the control of a court, it shall be of such a nature that it can be under that control so that the administration of it can be reviewed by the court : vide *Morice v. The Bishop of Durham* [(1805) 10 Ves. 522, 532, 32, E.R. 947].

And (5) A gift would not be charitable if the purpose is as vague as "dharam", when it may be employed for purposes which are not considered charitable.

The first principle could not obviously be applied to a case under the Act, for it has not expressly or by necessary implication, invoked the preamble to the Statute of Elizabeth. The second principle conflicts with the express provision of cl. (4) of s. 9 of the Act : while under the English law some purposes, though undoubtedly purposes of public utility, were not considered to be such on other considerations, under the Act such division is not permissible, as cl. (4) of s. 9 expressly makes every such purpose a charitable purpose. The third principle has not been consistently followed even in England; nor can I find any reasonable basis for the same. If that be correct principle, then no purpose, however demonstrably it may be for the general public utility, can be charitable if to implement its purpose it is necessary to create a climate for changing the existing law. Trusts created for educating the public on the evils of alcoholism, prostitution and other social evils, with a view to put pressure on the legislature to bring about appropriate reforms would cease to be charitable : political purposes may be brought under this head, for mostly, though not always, such purposes would be sought to be effectuated by a change in law. But in my view, the mere fact that a change of law is involved in the process could not make a purpose otherwise charitable a non-charitable one. Nor does the fourth principle afford a correct test for a charitable purpose. It is true that the author's declaration that a particular gift is charitable is not decisive of the question, but in the ultimate analysis the court has to decide whether the purpose or object is charitable or not. I do not see any insurmountable difficulty in the court coming to a conclusion one way or other whether a political object is charitable object, just like it would come to a conclusion in the case of a gift for the propagation of the tenets of a particular religious sect. Nor can it be said that the court by deciding the character of a trust created for political purposes will be indulging in politics. If that be so, it can be said with equal justification that in the case of a religious trust a court by deciding the said question would be supporting a particular religious sect in preference to another. The court does not take sides in the political or religious controversy, but only objectively looks at the purpose to ascertain whether it is charitable or not and administers it, if called upon, through the necessary machinery. The fifth principle is sought to be applied to a political purpose. It is said that the express on "political purpose" is so vague that there is the possibility of the trust being applied to non-charitable purposes. I do not see how it can be posited that every political purpose is a vague purpose : it depends upon the facts of the case. It is for the court to construe the trust deed in each case with a view to ascertain whether the purpose, political or otherwise, is vague or not. If a gift for the benefit of a place, whether a parish, town, borough, county or country is charitable, as has been held in the "locality cases", I do not see how a gift for the political uplift of the country would never be for a charitable purpose on the ground that it would be vague. Nor can it be said as a proposition of law that the propagation of the principles of a particular political party would necessarily be not beneficial to the community. Suppose a country is backward or undeveloped and a philanthropist endows property for propagating a particular doctrine likely to bring about the welfare of the public : the ideology sought to be propagated may be labelled according to the doctrines prevalent in a particular country. How can it be said as an inflexible rule of law that a political purpose is not beneficial to the community ? It depends upon the facts of each case. Tudor in his book on Charities, 5th Edn., p. 41, points out that "the proposition that political purposes cannot be charitable is difficult to reconcile with certain decided cases". Even some of the decisions of the English courts, finding the illogicality of such a doctrine, attempted to modify it by stating that it is necessary, in order to establish the validity of a charity, to show that the end is not to be attained mainly by political means, indicating thereby that the dominant purpose shall not be a political one. The approach of the English Courts to this problem has been succinctly stated by Chitty, J., In *Re Foveaux* [(1895) 2 Ch. 501] thus :

"The method employed by the Court is to consider the enumeration of charities in the

Statute of Elizabeth, bearing in mind that the enumeration is not exhaustive. Institutions whose objects are analogous to those mentioned in the Statute are admitted to be charities; and again, institutions which are analogous to those already admitted by reported decisions are held to be charities. The pursuit of these analogies obviously requires caution and circumspection. After all, the best that can be done is to consider each case as it arises, upon its own special circumstances."

Though this statement appeared in the year 1895, a scrutiny of the later decisions indicates that the same approach continued to be adopted by the courts. Tudor in his book on Charities, 5th Edn., p. 38, describes the judicial approach to the problem thus:

"The Courts have extended the class outlined in the preamble to the Statute of Elizabeth to such an extent as to render it valueless as a basis for the classification of charitable objects, and it must be admitted that no analogous counterpart to many of the charities enumerated here can be traced in the preamble."

To summarize : English decisions are conflicting; there is no common thread passing through the variety of decision, starting from the preamble to the Statute of Elizabeth, and apparently relying upon the fourfold classification of Lord Macnaghten, English courts from time to time decided cases which could not be sustained either on the illustrations in the preamble to the Statute of Elizabeth or the analogies drawn from them, or the classification of Lord Macnaghten. The decisions conflict with one another, and it is not possible, or even advisable, to seek to get any guidance from the said decisions to construe the clear provisions of the Indian statutes, or a document executed in Indian statutes, or a document executed in India under circumstances totally different from those obtaining in England. In India, the superstructure of democracy is sought to be built upon an illiterate basis. If the country had to reach political maturity, no facet of education would be more important than that political science. In *Trustees of the Tribune Press, Lahore v. Commissioner of Income-tax, Punjab* [[1939] L.R. 66 I.A. 241, 256] the Judicial Committee held that a trust created by a testator by his will to the effect that his property "in the stock and good will of the Tribune Press and Newspaper in Anarkali, Lahore," should vest permanently in a committee of trustees whose duty it should be "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 newspapers and placing it on a footing of permanency," was a good and valid trust. It was held that the object of the newspaper was to supply the Province with an organ of educated public opinion, which was an object of general public utility and accordingly the trust income was exempt from taxation under sub-s. (3) of s. 4 of the Indian Income-tax Act, 1922. The Judicial Committee took the case before it out of the scope of the English decisions with the following observations :

"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."

On the facts of the case before it, the Judicial Committee came to the following conclusions :

"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".

Subsequent remarks show the distinction between party-politics and general political education :

"Having regard to the particular a 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 *In re Scowcroft* [(1898) 2 Ch. 638] than it is to the case of the *Bonar Law Memorial Trust* [1933] 17 Tax Cas. 508], or to the case put by Russell, J., in *In re Tetley* [(1923) 1 Ch. 258] of a newspaper subsidized for the promotion of particular political or fiscal opinions."

This Judgment was a clear attempt to sustain the validity of the trust, though constituted to educate the public opinion involving also the propagation of political views, having regard to the wide definition of charitable purpose under the Indian Act. In *All India Spinners' Association of Mirzapur, Ahmedabad v. Commissioner of Income-tax, Bombay* [(1944) L.R. 71 I.A. 159], the All India Congress Committee by its resolution started an association for the purpose of development of hand-spinning by the use of handlooms. The association was run on a co-operative basis, that is, the surplus income was distributed only among the members : the Privy Council held that though the association was started by a political party, the purpose of the association was a charitable one within the meaning of the Income-tax Act. Lord Wright says :

"The statement of the object excludes, in their Lordship's opinion, any question of profit making, and also excludes any element of party politics."

Then adverting to the very wide words sub-s. (3)(i) of s. 4 of the Income-tax Act, 1922, namely, "other purposes of a general public utility," the Judicial Committee proceeded to observe :

"These last are very wide words. Their exact scope may require on other occasions very careful considerations.....Though the connection 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 purpose were independent of, and were not affected by, the purposes of propaganda of Congress."

Referring to the English decisions, the Judicial Committee observed :

"The English cases there (*Tribune Press Case* [(1939) L.R. 66, I.A. 241, 256]) 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."

The decision lays down two principles, namely, (1) the words "other purposes of general public utility" are very wide and the English decisions do not turn upon those words; and (2) even on the assumption that the said decisions applied, a trust does not cease to be for general public utility, though it may be for the advancement primarily of a particular party, if the purposes were independent of, and were not effected by, the purposes or propaganda of that party. This case, while not deciding on the wide import of the Indian statute, made a distinction between a party's propaganda and its party politics and its other objects. In *Subash Chandra Bose v. Gordhandas Patel* [I.L.R. 1940 Bom. 254, 278] a testator made four gifts by his will and provided that "the balance of my assets after disposal of the above mentioned four gifts is to be handed over to Mr. Subash

Chandra Bose to be spent by him or by his nominee or nominees according to his instructions for the political uplift of India and preferably for publicity work on behalf of India's cause in other countries." The Bombay High Court held that the words "political uplift of India" whether it denotes a general raising of the political status or conditions of India or the advancement of a political purpose was too vague to be capable of enforcement by the Courts and accordingly the trust was bad and an intestacy resulted as to the residue covered by the clause. The decision, therefore, was based upon the principle that a charitable purpose could not be sustained when it was vague. But the observations of Beaumont, C.J., are instructive, and they are :

"However, there the cases are, and if we had in this case a gift to India, or a gift to the people of India, we would have to consider whether the principle of those cases should be applied in India, and if so whether that principle which has been gradually extended from a parish to a country should now be extended to sub-continent."

The further observations of the learned Chief Justice at p. 279 indicate the reasons for the decision :

"What we have got here is a gift for the political uplift of India, and one cannot possibly disregard the adjective 'political'. Assuming that the meaning of those words is that for which Mr. Bose contends, i.e., that they denote improvement in the political system of India, and therefore to that extent must be beneficial to India, the difficulty is that the words are too vague.....The test must ultimately be whether, if the Court be called upon to administer the trust, the Court would be able to do so. Here, it seems to me impossible for the Court to determine what is embraced in the term political uplift of India." Citing the observations of Lord Parker, the learned Chief Justice observed at p. 281 :

"A trust to advance a political purpose is clearly bad on the ground given by Lord Parkar in *Bowman v. Secular Society Limited* [(1917) A.C. 406], that a trust of the attainment of political objects is invalid, not because it is illegal, but because the Court has no means of judging whether any proposed political change will or will not be for the public welfare or benefit."

The learned Chief Justice, therefore, might have held that the trust was charitable if he had not come to the conclusion that the purpose of "political uplift" was vague and a court was not in a position to know whether a particular political object would be or would not be for the public welfare or benefit. A division Bench of the Bombay High Court in *re Lokamanya Tilak Jubilee National Trust Fund, Bombay* [(1941) 43 Bom. L.R. 1027] had to consider a similar question under the Income-tax Act, 1922.

There, a trust was created for the following objects : (1) the advancement of any purpose which might in the uncontrolled opinion of the managing committee be national or of national importance for the inhabitants of British India, (2) the political advancement of India having for its goal the acquisition of complete national autonomy or "swarajya", (3) the diffusion of political education and knowledge as to the political affairs of India and propagandist work both in India as well as in any part of the world, and (4) any object which might conduce to any of the aforesaid object. The Court held that the first mentioned object went beyond the definition of "charitable purposes" contained in s. 4 of the Income-tax Act in as much as the section of the purpose rested in the uncontrolled opinion of the managing committee, and that the second mentioned object also went too far, because it was really a gift for political purposes. Beaumont C.J., who delivered the leading judgment,

noticed that the purpose, namely, the advancement of any other object of general public utility went further than the definition of charity to be derived from the English cases. He observed that, if all the purposes in the trust deed could be regarded as of general public utility for the benefit of the inhabitants of English India, then the trust would be, in his opinion, a good charitable trust. But he could not decide that it was so, because, in his opinion, if the attainment of national autonomy might be regarded as a national purpose accepted generally by, and for the good of, the inhabitants of British India, there was a very keen divergence of opinion as to the methods by which that national autonomy should be attained and, therefore, the gift was for political purposes. Kania, J., who delivered a separate but concurring judgment, came to the conclusion that the second mentioned object was pre-eminently a political purpose and fell within the rule stated in the Tribune's case [(1939) L.R. 66, I.A. 241, 256]. If I may say so, with respect, the decision of the learned Judges was unconsciously coloured by the English decisions based on party politics and those decisions had been wrongly applied to a case of national uplift of the country which was struggling for independence.

The trust now in question came under the judicial scrutiny of the Bombay High Court in connection with the Income-tax Act, 1922. The trustees there then contended that the trust was for a charitable purpose and was, therefore, not subject to the provisions of the Income-tax Act. The High Court held that cl. (1) of the trust deed could not be construed as constituting a charitable purpose, as the purposes mentioned in the said clause were too vague and wide to constitute charitable purposes within the meaning of the Income tax Act. Beaumont, C.J., who delivered the judgment of the Bench, observed :

"The purpose include organising public movements, and even if you limit those general words by the words 'calculated to promote of national ideal', it seems to me impossible to say that the promotion of public movements calculated in the view of the trustees to promote the national ideal can be regarded as necessarily of public utility."

The learned Chief Justice went on to observe :

"It seems to me clear that under clause I of this trust-deed the whole of the profits of the newspapers could be applied for any one of the various objects specified and, therefore, if any of those objects do not fall within the definition of a charitable object, then the clause cannot be regarded as constituting a charitable trust, and, as I have said, in my view, some of the objects of the trust certainly go beyond the definition of charitable trust."

The reason of the decision, therefore, was that some of the objects of the trust were charitable and others were not, and as the whole of the profits of the newspapers could be applied for non-charitable purpose, the trust was not valid. The High Court then did not decide whether the first purpose in the trust deed was charitable or not : that question falls to be decide in the present case.

It is therefore, clear that the Indian decisions, though to some extent coloured by the English decisions, appreciated the distinction between the wide language of sub-s. (3) of s. 4 of the Indian Income-tax Act and the fourth category of Lord Macnaghten's classification under the English law of charities. But I find it difficult to accept the observations made in the said judgments that a trust created for the advancement of political objects would necessarily cease to be one for a public charitable purpose. In support of this proposition there is nothing except the doubtful and conflicting

authority in England. There is no justification to curtail the wide words of the statute by importing foreign ideas developed in a different set up.

In this context, a decision of the Supreme Court of one of the States in America is rather instructive, viz., that in *Taylor v. Hong* [(1922) 21 A.L.R. 946, 949, 950]. There, a trust created to promote improvements in the structure and methods of government was held to be a charitable trust, although the purpose was to secure radical changes in the "present" system. Frazer, J., answers in my view effectively, all the objections raised by the English Courts in holding that a trust for a political purpose was void. Adverting to the question that the trust in that case involved a change in the existing law, the learned Judge observed :

"Must it be held void because the successful attainment of these objects would involve a change in existing laws. We would hesitate to subscribe to such doctrine, unless reason or authority compelled us to do so."

The learned Judge proceeded to state :

"To hold that an endeavour to procure by proper means, a change in a law, is, in effect, to attempt to violate that law, would discourage improvement in legislation and tend to compel us to continue indefinitely to live under laws designed for an entirely different state of society. Such view is opposed to every principle of our Government, based on the theory that it is a Government 'of the people, by the people, and for the people, and fails to recognize the right of those who make the laws to change them at their pleasure, when circumstances may seem to require. With the wisdom of the proposed change the courts are not concerned. We perform our duty in determining whether or not the method adopted to make the change violates established law. In the present case we find no apparent intent to violate any law. On the contrary, the trust specifically requires its objects to be accomplished by 'lawful means.'"

Now, let me consider some of the provisions of the Act which are in direct conflict with some of the tests laid down by the English decisions to ascertain whether a purpose is charitable or not. The first is s. 9(4) which says that a charitable purpose includes the advancement of any other object of general public utility. I have already pointed out the wide amplitude of these words. Section 11 says :

"A public trust created for purposes some of which are charitable or religious and some are not shall not be deemed to be void in respect to the charitable or religious purpose, only on the ground that it is void with respect to the non-charitable or non-religious purpose."

While in England if a trust was created for a charitable or a non-charitable purpose, the entire trust would be void, as the trusts would be void, as the trustees could administer the trust exclusively for the benefit of non-charitable purposes, under s. 11 of the Act the law is changed in regard to that matter. Section 55 introduces a cypres doctrine which is wider in scope than the doctrine is generally understood in that it enables the court, inter alia, under certain circumstances, if it is not in public interest, expedient, practicable, desirable, necessary or proper to carry out wholly or partially the original intention of the author of the public trust or the object for which the public trust was created, to apply the same to any other object. The Act widens the scope of a charitable purpose as

understood in the English law, recognizes the validity of the trust though the purposes include both charitable and non-charitable, and enables the court, under certain circumstances, to divert the trust to other charitable purposes not intended by the author of the trust. The liberal spirit adopted by the Act does not permit a narrow interpretation of a charitable purpose accepted by the English courts under different circumstances.

Let me now summarize my views on the subject : (1) The English decisions are based upon a pragmatic approach to the problems that arose before them, having regard to the historical development of the law of charities in that country; there is no common thread discernible in the large volume of English decisions. (2) Under the Act, unlike in England, the advancement of the object of common public utility is declared to be a charitable purpose, and it is not permissible to curtail its scope with reference to English decisions. (3) The expression "object of general public utility" is very comprehensive and it includes every purpose, whether political or otherwise, provided it is an object of general public utility.

The English decisions, therefore, afford no help to construe s. 9 of the Act to ascertain whether a purpose is charitable or not under the India law.

For the reasons I have given, I hold, without any hesitation that the purpose of the trust in the present case is a charitable purpose within the meaning of s. 9 of the Act.

Even on that basis it is contended that a trust giving power to a trustee to spend the trust funds on charitable and non-charitable objects is void and as the High Court held that the second object of the trust was non-charitable the entire trust must fail. This argument ignores the distinction between a trust deed empowering a trustee to spend on a charitable object or a non-charitable object and a trust deed empowering him to spend on a charitable object and a non-charitable object. In Halsbury's Laws of England, 3rd Edn., Vol. 4, at p. 272, the following passage appears :

"When a testator give funds to be applied partly for objects which are charitable and partly for objects which either are not charitable or fail, but does not specify the proportions in which the funds are to be applied for the different objects, the Court will make an apportionment."

"Again, where a fund is given for several objects, some charitable and some non-charitable or illegal, there being a clear intention to devote some part to the charitable objects, if it can be ascertained what are the proper proportions to be attributed to the several objects, the Court directs an inquiry, but if from the nature of the gift it appears impracticable to fix the proportions, the Court divides the fund equally between the different objects."

This passage is supported by decisions relied upon by the author. It is not necessary to discuss them in detail, as the learned counsel for the appellant has not questioned the correctness of the said proposition. In this view, it is not necessary to consider whether s. 11 of the Act as retrospective operation,. Learned counsel for the appellant attempted to argue that s. 55 of the Act offends his right of reversion to the property which is the subject-matter of the trust. The question of the validity of the said section does not arise in the present case. The only question is whether it is the duty of the trustees of the trust to make an application for registration of the said trust. As I have held that the trust is a public trust within the meaning of s. 9 of the Act, under s. 18 thereof, the said trust has to be registered in manner prescribed therein. Questions such as the extent of the trust, the

scope of the doctrine of cypres, are all foreign to the present inquiry. I do not propose to express any opinion on the same.

In the result, the appeal fails and is dismissed with costs.

BY COURT :

In view of the majority opinion of the Court the appeal is allowed and the Order of the Assistant Charity Commissioner directing the Trust to be registered confirmed by the Charity Commissioner on appeal is set aside. The appellants will be entitled to their costs in all the Courts.

Appeal allowed.

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