The State of Maharashtra and Others

Vs

The Salvation Army, Western India Territory

The State of Maharashtra and Others

Vs

Shri Lohana Maha Parishad, A Public Trust

Civil Appeals Nos. 487 and 488 of 1973

(K. K. Mathew, P. N. Bhagwati, N. L. Untwami JJ)

10.02.1975

JUDGMENT

MATHEW, J. -

1. The respondent in this appeal is the Salvation Army, Western India Territory. It is a part of the world-wide organisation known as the Salvation Army. The headquarters of the organisation is in London. The organisation in India was registered as a public limited company under the Indian Companies Act, 1913, having obtained a licence to carry on its activities without suffixing the word 'limited' after its name. It is also registered under the Bombay Public Trusts Act, 1950 (hereinafter called the 'Act') and carries on various charitable activities. The Company has its headquarters in Bombay. The funds of the Company are administered under the Articles of Association by a Board consisting of a General, a Chief of Staff and various other officers. The accounting year of the Company is from October 1, to September 30 of each year. In the years ending September 30, 1954, September 30, 1955 and September 30, 1965, the respondent received three sums from the international organisation, namely, Rs. 1,97,302, Rs. 2,50,228-14-0 and Rs. 2,67,732-15-0. Besides these amounts, the respondent had made collections in India. Upon all these amounts the respondent was called upon to pay a contribution of two per cent as required by Section 58 of the Act read with Rule 32 of the Bombay Public Trust Rules. The respondent claimed exemption from liability to pay contribution upon the three donations. Appellant No. 3 disallowed the claim. The respondent's appeal against the order was dismissed by appellant No. 4. The respondent thereupon filed a writ petition in the High Court of Bombay for a declaration that the provision for levy of contribution contained in Section 58 of the Act and Rules 32 and 33 of the Rules as also the provisions of Sections 2 and 4 of the Maharashtra Act 29 of 1962 (hereinafter referred to as the "Amending Act of 1962") were beyond the powers of the State Legislature and that the levy of contribution on the three donations was therefore illegal. The respondent also prayed for quashing the orders passed by appellants Nos. 3 and 4 disallowing its claim for exemption from levy of contribution upon the aforesaid sums.

2. A learned Single Judge of the High Court held that the levy was bad as it was not a fee but tax.

3. Against this decision, an appeal was preferred before the Division Bench of the appellants. The

Bench came to the conclusion that though the levy of two per cent on the gross income of the public trusts was a fee in the beginning, it assumed the character of a tax by the end of March 31, 1958 as there was a surplus of Rs. 30,44,541 by that time and therefore the levy assumed the character of tax and was illegal from that date. The Court further held that the levy of contribution on the three donations was ultra vires as the actual levy was made after it assumed the character of a tax. It is against this judgment that this appeal has been filed on the basis of certificate granted by the High Court.

4. The Act was brought into force from August 14, 1950. The object of the Act is to regulate and make better provision for the administration of public, religious and charitable trusts in the State of Bombay. Section 57(1) states that there shall be established a fund to be called the Public Trusts Administration Fund and that the Fund shall vest in the Charity Commissioner appointed under the Act. Clauses (a) to (f) of sub-section (2) of the section specify the amounts which go to make the fund. Of these, clause (b) concerns the contribution made under Section 58.

5. Section 58 was amended by the Amending Act of 1962 and the Amending Act came into force on August 27, 1962. That section at all times, prescribed that every public trust shall pay to the Public Trusts Administration Fund annually such contribution on such date and in such manner as may be prescribed. The contribution to paid with originally fixed by Rule 32 which was also amended by the Amending Act of 1962.

6. Section 58 as it originally stood provided that the contribution prescribed under the section shall, in the case of public trusts other than dharmada, be fixed at rates in proportion to the gross annual income of such public trusts and the Explanation stated that, for the purpose of the section, the gross annual income shall include gross income from all sources in a year excluding donations given of offering made with a specific direction that they shall form part of the corpus of the public trust.

7. Rule 32(1) of the Bombay Public Trust Rules, 1951, framed under Section 84, clause (b), provided that every public trust other than a trust exclusively for the purpose of secular education imparted by a recognised institution or exclusively for the purpose of medical relief shall pay annually to the Public Trusts Administration Fund out of its property or funds a contribution at the rate of two per cent of its gross annual income or, where the public trust is a dharmada, its gross annual collection or receipts. In sub-rule (3) of Rule 32, it was provided that in calculating the gross annual income or receipts for the purpose of assessing the contribution the following deduction shall be allowed :

donations given with specific directions that they shall form part of the corpus (vide Explanation to Section 58).

By the Government notification dated December 3, 1953, Rule 32 was amended. The provision for levy of contribution was substantially the same as in sub-rule (1) of Rule 32 but the amended sub-rule (3) of Rule 32 was as follows :

> (3) In calculating the gross annual income of a Public Trust, or where the public trust is a dharmada, its gross annual collection or receipts, for the purpose of assessing the contribution, the following deductions shall be allowed, namely :

and clause (iii) corresponding to the original clause (iii) of Rule 32 (3) ran as follows :

donation received during the year from any sources.

This rule was patently ultra vires of Section 58 itself, for, the Explanation to Section 58 excluded donations given or offering made by a specific direction that they shall form part of the corpus of the public trust. But clause (iii) of Rule 32 (3), after its amendment in 1953, excluded all donations received during the year from any source. The State Legislature therefore passed the Amending Act of 1962 which inserted certain provisions of Rule 32 of the Rules as substantive provisions in the Bombay Public Trust Act, 1950. The legislation amended Section 58 itself and the amended section was substituted for the old section. The amended section, so far as it is material, provides :

58. (1) Subject to the provisions of this section, every public trust shall pay to the Public Trusts Administration Fund annually such contribution at a rate or rates not exceeding five per cent of the gross annual income, or as the case may be, of the gross collection or receipts, on such date, and in such manner, as may be prescribed.

The contribution prescribed under this section shall :

> (i) in the case of a dharmada, be fixed at a rate or rates on the gross annual collection or receipts of the dharmada.
>
> (ii) in the case of other public trusts, be fixed at a rate or rates on the gross annual income of such public trust. Explanation (1) - For the purpose of this sub-section 'gross annual income' means gross income from all sources in a year (including all donations and offerings), but does not include any payment made or anything given with a specific direction that it shall form part of the corpus of the public trust, nor include any deductions which the State Government may allow by rules . . . .

8. Provision was also made for the period during which Rule 32 remained in operation and therefore Section 4 of the Amending Act of 1962 provided for retrospective operation of the provisions of the Act Section 4 provides :

The substitution of Section 58 in the principal Act by Section 2 of this Act shall be and shall always be deemed to have been made in the principal Act and the provisions of clause (iii) of sub-rule (3) of Rule 32 of the Bombay Public Trust Rules, 1951, shall be deemed to have been detected from the date on which those rules came into force; and accordingly, Rule 32 of these Rules as amended shall be deemed always to have been validly made and to have full effect, as if it had been duly made under the principal Act as amended by this Act and anything done or action taken under that rule shall be deemed to have been validly done or taken.

9. An amendment was also effected by the Act itself in Rule 32 by deleting clause (iii) of sub-rule (3) of Rule 32.

10. The validity of these amendments was not challenged before this Court.

11. The two main questions which arise for consideration in this appeal are : (1) whether the levy of contribution under Section 58 read with Rule 32 (3) was a tax from the inception of the levy or whether, although the levy was a fee in its inception, it assumed the character of tax in any subsequent year by reason of the accumulation of the surplus of the income over the expenditure, and (2) whether the levy of contribution on the three donations was justified.

12. As already stated, the learned Single Judge was of the view that the levy was in the nature of a tax from its inception for the reason that the contribution levied had no correlation to the services

rendered. The learned Judge in taking this view was largely influenced by the statement of the income and expenditure of the charity organisation contained in Exhibit 1 for the years from 1953 to 1970. The learned Judge said that the ratio of revenue expenditure to the receipt every year was 53.33 per cent on an average and that there was always a surplus of about 47 per cent after meeting all the annual recurring expenditure, that accumulation to the extent of 47 per cent on an average every year had ultimately brought about the result that even after meeting the total expenditure, the surplus came to Rs. 44,60,973 on March 31, 1965, that it was augmented further to Rs. 84,49,473 by March 31, 1970 and therefore the levy was at all times a tax and was beyond the power of the Legislature. He further held that the respondent was not liable to pay contribution in respect of the three amounts.

13. On appeal, the Division Bench, after considering the distinction between a fee and a tax as laid down by this Court came to the conclusion that the contribution at the rate of two per cent of the income of the trusts was a fee till the end of March 31, 1958 and that on account of the accumulation of surplus to the tune of Rs. 30,44,541 by the end of the year 1958, it assumed the character of a tax and therefore, after March 31, 1958, the levy became ultra vires the powers of the Legislature.

14. Now the first question for consideration is : What is the nature of a fee ? It is idle to parade the familiar learning on the question of the distinction between a tax and a fee. A tax is a compulsory exaction of money by a public authority for a public purpose enforceable by law and is not a payment for any specific service rendered. The levy of a tax is for the purpose of general revenue which when collected forms part of the public revenues of the State. There is no element of quid pro quo between the tax payer and the public authority. A fee is generally defined to be a charge for a special service rendered to individuals by the Government or some other agency like a local authority or statutory corporation. The amount of a fee levied is supposed to be based on the expenses incurred by the Government or the agency in rendering the service though in many cases the costs are arbitrarily assessed. Fees are ordinarily uniform but absence of uniformity is not a criterion on which alone it can be said that a levy is in the nature of tax. In the case of a fee, no account is taken of the varying abilities of different recipients of the service to pay. As a fee is regarded as a sort of return or consideration for services rendered, it is necessary that the levy of fees should be correlated to the expenses incurred by the agency in rendering the services.

If the special service rendered is distinctly and primarily meant for the benefit of a specified class or area the fact that in benefiting the specified class or area of State as a whole may ultimately and indirectly be benefited would not detract from the character of the levy as a fee (See Hingir Rampur Coal Co. Ltd. v. State of Orissa, 2 SCR 537, 549 : AIR 1961 SC 459).

It is also generally necessary that the payments demanded for rendering of such services must be set apart or specifically appropriated for that purpose and that they should not be merged in the general revenue of the State to be spent for general public purposes. It may not be possible to prove in every case that the fees that are collected by the Government or the agency always approximate to the expenses that are incurred by it in rendering the particular kind of services or in performing any particular work for the benefit of certain individuals.

A levy in the nature of a fee does not cease to be of that character merely because there is an element of compulsion or coerciveness present in it, nor is it a postulate of a fee that it must have direct relation to the actual services rendered by the authority to individual who obtains the benefit of the service. If with a view to provide a specific service, levy is imposed by law and expenses for

maintaining the service are not met of the amounts collected, there being a reasonable relation between the levy and the expenses incurred for rendering the service, the levy would be in the nature of a fee and not in the nature of a tax (See Sudhundra Thirtha Swamiar v. Commr. for Hindu Religious & Charitable Endowments, Mysore, 1963 Supp 2 SCR 302, 323 : AIR 1963 SC 966).

That there is correlation between the levy and the services can be proved by showing that on the face of the legislative provision itself, the collections are not merged in the general revenue but are set apart and appropriated for rendering these services. Thus, two elements are essential in order that a payment may be regarded as a fee. In the first place, it must be levied in consideration of certain services which the individuals accept either willingly or unwillingly and in the second place, the amount collected must be earmarked to meet the expenses of rendering these services and must not go to the general revenue of the State to be spent for general public purposes (See Commr. Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Shirur Mutt, (1954) SCR 1005, 1037, 1040 : AIR 1954 SC 282; Mahant Sri Jagannath Ramanuj Das v. State of Orissa, 1954 SCR 1045, 1053 : AIR 1954 SC 400 and Rathial Panachand Gandhi v. State of Bombay, 1954 SCR 1055, 1075 AIR 1954 SC 388).

15. In Nagar Mahapalika, Varanasi v. Durga Das Bhattacharya ((1968) 3 SCR 374, 385 : AIR 1968 SC 1119) the question was whether a certain bye-law under which the owners of rickshaws were liable to pay an annual sum of Rs. 30 and the drivers a sum of Rs. 5 partook the character of a fee. In the course of the judgment the Court said :

The High Court was of the opinion that the amount of Rs. 68,000 spent for paving the bye-lanes and Rs. 20,000 for lighting of streets and lanes cannot be considered to have been spent in rendering services to the rickshaw-owners and rickshaw-drivers. The reason was that under Section 7(a) of the Act it was the statutory duty of the Municipal Board to light public streets and places and under clause (h) of the same section to construct and maintain public streets, culverts, etc. The expenditure under these two items was incurred by the Municipal Board in the discharge of its statutory duty and it is manifest that the licence fee cannot be imposed for reimbursing the cost of ordinary municipal services which the Municipal Board was bound under the statute to provide to the general public (see the decision of the Madras High Court in India Sugar and Refineries Ltd. v. The Municipal Council, Hospet. (ILR 1943 Mad 521).

16. In Delhi Cloth and General Mills Co. Ltd. v. Chief Commissioner, Delhi ((1970) 2 SCR 348, 354 : (1970) 2 SCC 172), the point for consideration was whether the amount payable for renewal of licence to run the factory in question was a fee or tax. The Court observed : (SCC p. 177, para 9)

The High Court further found, which finding being of fact, must be considered as final that 60 per cent of the amount of licence fees which were being realized was actually spent on services rendered to the factory owners. It can, therefore, hardly be contended that the levy of the licence fee was wholly unrelated to the expenditure incurred out of the total realization.

17. In Government of Madras v. Zenith Lamp and Electrical Ltd. ((1973) 1 SCC 162 : 1973 SCC (Tax) 203), this Court considered, in the context of levy of Court fees, the relevant factors which might be taken into consideration in adjudging whether the levy was a fee or tax. The Court said : [SCC p. 170, para 31 : SCC (Tax) p. 211]

While levying fees the appropriate Legislature is competent to take into account all relevant factors, the value of the subject-matter of the dispute, the steps necessary in the prosecution of a suit or

matter, the entire cost of the upkeep of courts and officers administering civil justice, the vexatious nature of a certain type of litigation and other relevant matters.

18. In the light of this discussion, let us see whether the levy here was a fee and if it was a fee at the inception, whether, by reason of the accumulation of surplus, it became a tax in any subsequent year. According to Exhibit 1, the total receipts from all sources from the year 1953 to the year 1970 came to Rs. 2,20,78,080. According to the statement given by the Attorney General during the course of argument, the total contribution under Section 58 of the Act came to Rs. 1,73,56,874 treating the figures of total receipts in the years 1953 to 1956 as receipts only under Section 58. There is a mistake in the figures of the chart given by the Attorney General for the years 1963, 1964, 1965 and 1966. Substituting the correct figures for those years which tally with the earlier chart given by the Attorney General, also during the course of the argument, the amount of revenue receipts under Section 58 would come to Rs. 1,90,19,978 instead of Rs. 1,73,56,874. The total revenue expenditure from 1953 to 1970 according to Exhibit 1 is Rs. 1,17,86,443. Although in Exhibit 1 the total revenue expenditure is shown to be 53.33 per cent of the total of Rs. 2,20,78,080 actually the percentage has to be calculated with the reference to the figure of Rs. 1,90,19,978. Calculating on that basis, the percentage will come to about 62. On the basis of the decision of this Court in Delhi Cloth and General Mills case (supra) the levy was in the nature of fee as the expenditure was 62 per cent of the contributions levied and as there was approximate correlation.

19. It was, however, argued on behalf of the respondent on the basis of the decisions in Corporation of Calcutta v. Liberty Cinema ((1965) 2 SCR 477 : AIR 1965 SC 1107) and Nagar Mahapalika, Varanasi v. Durga Das Bhattacharya (supra) that the exercise of the power of supervision and control of public trusts under the provisions of the Act would not be special services, that performance of the statutory functions and duties under the Act is owed to the public and cannot be regarded as special benefits to the public trusts in the State for which a fee can be exacted as consideration.

20. The object of the Act as seen from its preamble is to regulate and make better provisions for the administration of public religious and charitable trusts in the State of Bombay. Chapter IV of the Act provides for registration of public trusts. Chapter V deals with submission of the budgets by the trustees of certain trusts and maintenance of accounts. Chapter V-A concerns the investment of public trust money and restrictions on alienations of trust property. Chapter VI deals with control. It makes provisions for supervision and control over public trusts, for issuing directions by the Commissioner, for suspension and removal of trustees and for protection of charities in general. A review of the relevant provisions in these chapters can only lead to the conclusion that the provisions are enacted with a view that public trusts are administered for the purpose intended by the authors of the trusts and for preserving the trust properties from waste and misappropriation by trustees. Taking precautionary measures to see that the public trusts are administered for the purposes intended by the authors of the trusts and exercising control and supervision with a view to preserve the trust properties from being wasted or misappropriated by trustees are certainly special services for the benefit of the trusts. Therefore, there is not substance in the argument that no special benefits were or are being conferred upon the public trusts in administering the provisions of the Act.

21. The question then is whether, by reason of the accumulation of surplus from 1953 onwards, the levy of contribution became a tax and if it became a tax, the point of time at which the levy assumed that character. It is not disputed that the collections by way of contribution exceeded the expenditure from 1953 onwards.

22. The respondent submitted that surplus must be taken into consideration in determining the character of the levy. Relying upon the decisions in Mukundaraya v. State of Mysore (AIR 1960 Mys 18) and Dalpathbhai Hemchand v. Chansma Municipality (AIR 1968 Guj 38), the respondent contended that the benefit of the surplus should go to those who have to pay the contributions and that the rate of the levy should at any rate be reduced so as to maintain the just relation between the levy and the services. In other words, the argument was that if it is found that the fee imposed resulted in surplus, the rate of the subsequent imposition should correspondingly be reduced so that it may be commensurate with the expenses that are to be incurred in connection with the services.

23. As we said, the fee must, as far practically as possible, be commensurate with the services rendered. One should not seek for any mathematical accuracy in these matters but be content with rough approximations. The services are mostly rendered by the officers of the Charity Organisation. With the proliferation of public trusts in the State, it became necessary to expand the Charity Organisation and to increase the staff for supervision and control. It also became necessary to have more regional offices for the more effective and immediate supervision and control. The expenditure in constructing buildings for locating the head office and regional offices and the increase in the allowances or other amenities to the staff have also to be included in the costs of the services. When there is surplus, it cannot immediately be said that the surplus must necessarily go in reduction of the rate of contribution to be levied thereafter. We think that it would neither be expedient nor prudent to lay down any abstract proposition that whenever there is surplus in a particular year or a number of years, that surplus must always be taken into consideration and the rate of the contribution should be reduced for the next year or subsequent years. An organisation like the one in question may have to incur capital expenditure for the better administration of the trusts and it might not be able to foresee all the contingencies in which such expenditure will have to be incurred for the most efficient working of the organisation. This Court has expressly stated in the Delhi Cloth and General Mills case (supra) that services worth 61 per cent of contribution would be sufficient quid pro quo to make a levy a fee. So, when we find that in this case the organisation has been rendering services worth 62 per cent of the contribution, it cannot per se be said that there is no correlation between the fee levied and the services rendered. But at the same time when it is seen that after taking into account the capital and other expenditure necessary for the efficient functioning of the organisation for the better administration of the trusts, a large surplus is still left, then the question will arise whether it is permissible for the organisation to continue the levy at the same rate which will only result in further surplus and to invest this surplus solely for earning income or to divert the surplus for other objects, though charitable in nature. We do not think any such levy for investment or diversion of the surplus would be consistent with the principle behind the levy of a fee. While we do not think it necessary that all available surplus in a year or for some years should always go in for reducing the rate of contribution for the subsequent year or years, we are of the view that the organisation cannot be allowed to accumulate an unreasonable amount - unreasonable in the sense that the amount might not be reasonably required for the proper and efficient working of the organisation in a foreseeable future. No hard and fast rule applicable in all contingencies can be formulated. The Court will have to draw a line somewhere when the surplus must be taken into consideration for reducing the levy of contribution. In drawing the line, the Court will have to look into the nature of the organisation, the potentiality for its growth, the multiplication in its work consequent on its expansion for rendering the services visualised by the Act and the necessity for capital expenditure in the near future as also the amount of levy collected or expected to be collected in a year. As already stated, the Division Bench was of the view that the stage when the surplus must be taken into account to determine the character of the levy was reached by the end of March 31, 1958 when the available surplus came to Rs. 30,44,541. The

Division Bench was alive to the desirability of locating the head office and regional offices in buildings to be owned by the organisation and incurring of capital expenditure in that behalf. The Charity Organisation has purchased a building worth about Rs. 30 lakhs. Even according to the Division Bench, investment of the surplus in buildings for locating the head and regional offices cannot be said to be diversion of the surplus for purposes alien to the object of the organisation, namely, the better administration of the trust. Therefore, we do not think that the contribution had assumed the character of a tax at the end of March, 1958.

24. The surplus in the account of the Public Trust Administration Fund at the end of March, 1970, was Rs. 84,49,473 after meeting the capital expenditure of Rs. 17,46,794 incurred during the years 1953 to 1970. In the figure of Rs. 84,49,473 is included the figure of Rs. 7,06,016, the accumulated balances under the repealed enactments transferred to the Public Trusts Administration Fund, plus interest of Rs. 7,13,004 on the said figure vide Exhibit No. 3. Even deducting the Rs. 14 lakhs from Rs. 84 lakhs, the surplus in the account of the Public Trusts Administration Fund at the end of March, 1970, was Rs. 70 lakhs. Allowing the capital expenditure of Rs. 30 lakhs on the building said to have been purchased by the Charity Organisation, the surplus was Rs. 40 lakhs. As we said, as a matter of principle, expenses for service should be correlated to the contribution levied under Section 58 of the Act. And the capital expenses should be met from the surplus funds including the sum of Rs. 14 lakhs (receipt under Section 61 plus interest thereon : Total : Rs. 14 lakhs). The surplus at the end of March, 1970 being Rs. 40 lakhs or, to be more accurate, Rs. 54 lakhs, the rate of fee at two per cent cannot continue in any event after March, 1970 without taking into account the corpus of Rs. 54 lakhs and the income therefrom. We think that the contribution at the rate of two per cent on the gross income of the trusts after March 31, 1970 onwards undoubtedly assumed the character of a tax as that merely augmented the income of the Charity Organisation. If the organisation is allowed to go on increasing its surplus year after year out of the amount of fee collected under Section 58 of the Act, it would demonstrate that the fee levied was unjustifiably disproportionate to the service rendered. We are, therefore, of the opinion that before levying any fee or determining its rate after March, 1970, the Charity Organisation has to balance its budget in the light of this judgment.

25. The respondent raised two contentions before the High Court with respect to its liability to pay contribution in respect of the three amounts in question. It was first contended that these amounts were not received by way of donations, and, second, that at the time when the respondent was sought to be made liable for contribution on these amounts, the levy had ceased to be fee and had assumed the character of tax. The respondent made a return of these amounts on January 8, 1960 on the basis that it was not liable to pay contribution on these amounts. No decision was taken on this return until June 10, 1963 and on that date a notice of demand was made for contribution in respect of these amounts.

26. The respondent has an independent legal personality as it was registered under the Companies Act and so the amounts which it received cannot be regarded as donations coming within the purview of Section 58 of the Act and Rule 32. The Division Bench held that these amounts were donations made by the international organisation in London to the respondent. We think that the High Court was right.

27. As already stated, the Amending Act came into force on August 17, 1962. The Division Bench was of the view that the levy of contribution on these amounts was ultra vires for the reason that at the time the levy was made it had ceased to be a fee and become a tax. We do not think that the High Court was right. No doubt, the demand for contribution was made only after the Amending

Act came into force. But by virtue of the retrospective operation of the amended Section 58 as provided in Section 4 of the Amending Act, the respondent became liable to pay contribution in respect of the three donations in the years in which they were received. It may be recalled that these three amounts were received by the respondent in the years 1954, 1955 and 1956. By virtue of the deeming provisions in Section 58 as amended, these donations became exigible to pay the contribution in the relevant years. We do not understand how these amounts which became exigible to levy of contribution in those years by virtue of the deeming provisions in Section 58 became exonerated from the liability even on the basis of the reasoning of the Division Bench that the levy assumed the character of a tax after March 31, 1958. The fact that the actual levy was made after 1962 would not make any difference in the liability of the respondent to pay the contribution in respect of these amounts as the liability was incurred when the levy had not assumed the character of tax even according to the Division Bench.

28. We, therefore, hold that the respondent is liable to pay contributions in respect of the three sums and that the Division Bench went wrong in quashing the orders passed by appellants Nos. 3 and 4 upholding the levy of contribution on these sums. We also hold that after March 31, 1970, the levy at the rate of two per cent of the gross income of the trusts cannot be justified as a fee. This does not mean that no levy of contribution was permissible thereafter. We only say that any levy thereafter should have correlation with the services, taking into consideration the existence of the surplus fund which was not immediately required for further expenditure by way of services including capital expenditure. We declare that levy of contribution at the rate of two per cent of the annual gross income of the trusts become levy of tax after March 31, 1970 and was without the authority of law. Since there was a prayer in the writ petition to declare Rule 32 as ultra vires, we think that the respondent is entitled to this relief.

29. We allow the appeal to the extent indicated but make no order as to costs.

II. Civil Appeal No. 488 of 1973

30. In this appeal, the points for consideration are practically the same. For the reasons we have given in our judgment in Civil Appeal No. 487 of 1973, we do not think that the Division Bench was justified in holding that the respondent was not liable to pay contribution in respect of the donations in question here and in quashing the order dated March 30, 1965. We, therefore, allow the appeal subject to the declaration of the nature of the levy after March 31, 1970, made in the judgment in Civil Appeal No. 487 of 1973. We make no order as to costs.

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