

Indian Chamber of Commerce

Vs

Commissioner of Income-Tax, West Bengal II.

Commissioner of Income-Tax, Kerala

Vs

Cochin Chamber of Commerce and Industry.

Civil Appeals Nos. 2455 to 2457 of 1972

(V.R. Krishna Iyer, A.C. Gupta, Syed M. Fazal Ali JJ)

17.09.1975

JUDGMENT

KRISHNA IYER J. -

1. These four appeals raise but one question, turning on the meaning of "charitable purpose" as defined in section 2(15) of the Incomes-tax Act, 1961 (Act No. 43 of 1961) (for short, "the Act"). The may be disposed of by one common judgment, although the two High Courts (Calcutta and Kerala) from where the appeals have come have taken contrary views on the single point in issue.

What are the bounds set of earning exemption a combined application of section 11(1) read with section 2(15) of the Act ? What is the parameter of the legal concept of charitable purpose ? Are the triune activities, which have yielded income and have been assessed to tax, eligible for exemption as falling within the scope of section 2(15) as it now stands ? These points of law, in the conspectus of facts presented in the case, have been argued in the light of conflicting decisions of the High Courts and illumined in part by a very recent pronouncement of this court is Sole Trustee, Loka Shikshana Trust v. Commissioner of Income-tax.

The assesses are the Indian Chamber of Commerce and the Cochin Chamber of Commerce. Their memoranda and articles of association are substantially similar and so the facts in the first case alone need be stated and the question of law discussed with reference to that case only. Hardly any distinction on facts or law which decide rate a separate consideration exists.

The Indian Chamber of Commerce is a company registered under section 26 of the Indian Companies Act, 1913, Its memorandum and articles of association spell out the broad objects and there is no doubt that they fall within the sweep of the expression "the advancement of any..... object of general public utility" as set down in section 2(15) of the Act. Briefly put, they are primarily promotional and protective of Indian trade interests and other allied service operations and protective of Indian trade interests and other all lied service operations. A general concluding clause authorizes it "to do all other things as may be conducive to the development of trade, commerce and industries or incidental to attainment of the above objects or any of them". It is clear form clauses 4 and 8 of the memorandum of association that the members of the chamber do not and cannot stand

to gain personally since no portion of "income and property of the association shall be paid..... directly or indirectly, by way of dividend or bonus or otherwise howsoever by way of profit to the persons who at any time are..... members of the association....." Even on dissolution of the association the member cannot claim any share in the assets. These highlight the fundamental fact that the chamber, by and large, strives to advance the general trade interests of India and Indian without seeking to make profits for its members. In the light of this court's decision in Commissioner of Income-tax v. Andhra Chamber of Commerce one may readily state that the chambers advance objects of general public utility and prima facie move into the exclusionary area of charitable purpose. However, the bone of contention in this case is as to whether the three source of income, viz., (a) arbitration fees levied by the chamber, (b) fees collected for the certificates of origin, and (c) share of profit in Messrs. Calcutta Licensed Measurers for issue of certificates of weighment and measurement fall within the exclusion. It may be mentioned that all these three services were extended to members and non-members or, rather, to the trade generally. Had the law bearing on "charitable purpose" by the addition of nine need words which cut back on the amplitude of the expression in the prior Act. The straight question to be answered here is whether in plain English the three activities which have yielded profits to the chamber involve "the carrying on of any activity for profit", uncomplicated by casuistic niceties, semantic nuances and case law conflicts. Uncomplicated, legislative simplicity has not been accomplished by the draftsman in the amended definition and, consequently, interpretative complexity persists. The judges of the Andhra Pradesh High Court in A.P. State Road Transport Corporation v. Commissioner of Income-tax observed, while considering the import of section 2(15) of the 1961 Act :

"It is one of the fundamental principles in legislation and the drafting of statutes that the provisions contained therein should be clear and cogent and, more so, with regard to the fiscal statutes which impose a burden on the public. But, in this case, what we find is that the amendment, instead of being clear and cogent, is complicated and courts have taken different views in interpreting the same."

We dare say that achieving greater simplicity and clarity in statute law will be taken up by the draftsman of the legislative bills to avoid playing linguistic games in court and promotion of interpretative litigation. Lawyers and legislators must stop confusing each other and start talking to their real audience-the people-so that communication problems may not lead to prolific forensic battles. We must confess to having been hard put to it to get at the controlling distinction between activities which fall on one side or the other of "charitable purpose". The assessee, the Indian Chamber of Commerce, was assessed for the accounting year 1963-64, on the income which arose from the three heads of arbitration fees, fees for certificates of origin and the share of profits in the firm, M/s. Calcutta Licensed Measures, which issued weighment and measurement certificates charging a fee therefore. The return for the assessment year showed a profit of Rs. 1,58,690 made up of a small amount from arbitration fees, and a similar sum from fees for issue of certificates of origin but a substantial sum by way of share of income from the fees charged for weighment and measurement. Although the Income-tax Officer repelled the claim of "charitable purpose" on the view that these activities were for profits, the Appellate Tribunal took a contrary view reversing the concurrent findings of the Income-tax Officer and the Appellate Assistant Commissioner. The conclusion of the Tribunal was that section 2(15) applied but the High Court, on a reference under section 256(1) of the Act, answered the question in favour of the revenue.

We have indicated earlier that the various High Courts have taken contrary views. Kerla has consistently held on facts substantially identical that section 2(15) is attracted. Andhra Pradesh has concurred, while Calcutta and Mysore have ranged themselves on the opposite side. A recent

decision of this court earlier mentioned has given some telling guidelines although the precise facet pressed before us may not be said to have been wholly covered by it.

The scheme of the Act may be briefly indicated to the extent it is relevant, before entering on the discussion. "Income" is taxable, but certain incomes shall not be included in the total incomes of the previous years of the person in receipt of the income. Section 11 excludes from the computation income derived from property held under trust wholly for charitable purpose. The chamber of commerce is a trade association which renders specific services to its members and, therefore, section 28 will ordinarily apply to its income, unless section 11 read with section 2(15) excludes it from taxability. The income drawn from non-members by the chamber will clearly be taxable unless section 2(15) comes to its rescue. Thus, the pivotal issue is as to whether the three channels of income may be treated as charitable purposes and, therefore, eschewed by section 11 from the charging provision.

At this stage we may read section 2(15) :

"2. (15) In this Act, unless the context otherwise requires, -

'charitable purpose' includes relief of the poor, education, medical relief, and the advancement of any other object of general public utility not involving the carrying on of any activity for profit."

The obvious change as between the old and the new definitions is the exclusionary provision introduced in the last few words. The history which compelled third definition modification was the abuse to which the charitable disposition of the statute to charitable purposes was subjected by exploiting business, em. You create a charity, earn exemption from the taxing provision and run big industries virtually enjoying the profits with a seeming veneer of charity, a situation which exsuscitated Parliament and constrained it to engraft a clause deprecatory of the exemption if the institution fulfilling charitable purposes undertook activities for profit and thus sought to hoodwink the statute. The Finance Minister's speech in the House explicates the reason for the restrictive condition. He stated in the House.

"The definition of 'charitable purpose' in that clause it at present so widely worded that it can be taken advantage of even by commercial concerns which, while ostensibly serving a public purpose, get fully paid for the benefits provided by them, namely, the newspaper industry which while running its concern on commercial lines can claim that by circulating newspapers it was improving the general knowledge of the public. In order to prevent the misuse of this definition in such cases, the Select Committee felt that the words 'not involving the carrying on of any activity for profit' should be added to the definition."

Beg J. in *Loka Shikshana Trust* has adverted to this statement as throwing light on the new provision. The evil sought to be abolished is thus clear. The interpretation of the provision must naturally fall in line with the advancement of the object. Of course, there are border line cases where it becomes difficult to decide at first sight whether the undertaking which yields profit is a deceptive device or a bona fide adventure which results in nominal surplus although substantially intended only to advance the charitable object.

Chambers of commerce dot this country and, by and large, they have the same complex of objects.

They exist to promote the trading interests of the commercial community and, after the Andhra Chamber of Commerce case have been regarded as pursuing charitable purposes. This expression, defined in section 2(15), is a term of art and embraces objects of general public utility. But, under cover of charitable purposes, crop of camouflaged organisation sprung up. The mask was charitable, but the heart was hunger for tax-free profit. When Parliament found this dubious growth of charitable chameleons, the definition in section 2(15) was altered to suppress the mischief by qualifying the broad object of "general public utility" with the additive "not involving the carrying on of any activity for profit". The core of the dispute before us is whether this intentional addition of a "cut back" clause expels the chamber from the tax exemption zone in respect of the triune profit-fetching sub-enterprises undertaken by way of service or facility for the trading community.

The rival constructions put forward by counsel at the Bar may now be noticed. Shri A. K. Sen's argument for the chamber is that the controlling distinction between what is "charitable purpose" and what is not lies in discovering the dominant intent as distinguished from the subsidiary consequence, the principal object, not the incidental in law, the profit motive of the operation as against the service-oriented activity which may or may not en passant yield an income. His stress, as in the Kerla case, is on whether the activity is wrapped up, intangible and intertwined with the public utility object. If it is, the resultant surplus is not an eligible income. Such, certainly, are the pass words and touchstone used in several Kerala decisions. If this be the parameter, he argues, the three activities are saved because they render service, promote trade and facilitate the wheels of business to move. They do not form activities for making profit; they are in fulfillment of the objects of the chamber.

Shri Sharma for the revenue reads into the amended definition a total exclusion from the charmed circle of charitable purposes all activities which are prone to produce profits. The telling test, according to this view, is to see that the means, like the ends, are charitable, untainted by gainful stimulus and purged of the potential for profit in reality. By this canon the chamber's desire to serve businessmen by offering arbitral or certificate facilities in return for a price is prima facie an "activity for profit" unless the circumstances, express or necessarily implicit, eloquently proclaim a "no profit" foundation for the undertaking. The linkage is not between object of public utility and the challenged activity but between the methodology adopted for the advancement of such objects and proneness for profit flowing from such method or activity. If this standpoint be sound, the three services which have yielded profits, although wrapped in, engaged or intertwined with the object of promoting trade interests, are still liable to tax, there being no visible limitation on the revenues that may arise from them and these precise activities could be carried on by private individuals for profit.

The legal break-through lies along a realistic line of reasoning, taking care to avoid the extreme position of Shri Sharma which will render the last limb of section 2(15) illusory or ineffectual and as serviceable for tax exemption of charities as the appendix to the human physiology. In our view, the key to the problem is furnished not merely by a careful look at the history of the evil and the parliamentary debates—at least the Finance Minister's speech on the new guide lines in Loka Shikshana Trust.

Taking a close-up of section 2(15) with special emphasis on the lot concluding words, we have to interpret "charitable purpose" in such manner that we do not burke any word, treat any expression as redundant or miss the accent of the amendatory phrase. So viewed, an institution which carries out charitable purposes out of income "derived from property held under trust wholly for charitable purposes" may still forfeit the claim to exemption in respect of such takings for incomes as may

come to it from pursuing any activity for profit. Notwithstanding the possibility of obscurity and of dual meanings when the emphasis is shifted from "advancement" to "object" used in section 2(15), we are clear in our minds that by the new definition the benefit of exclusion from total income is taken away where in accomplishing a charitable purpose the institution engages itself in activities for profit. The Calcutta decisions are right in linking activities for profit with advancement of the object. If you want immunity from taxation, your means of fulfilling charitable purposes must be unsullied by profit-making ventures. The advancement of the object of general public utility must not involve the carrying on of any activity for profit. If it does, you forfeit. The Kerala decisions fall into the fallacy of emphasizing the linkage between the objects of public utility and the activity carried on. According to that view, whatever the activity, if it is intertwined with, wrapped in or entangled with the object of charitable purpose even if profit result therefrom, the immunity from taxation is still available. This will result in absurd conclusions. Let us take this very case of a chamber of commerce which strives to promote the general interests of the trading community. If it runs certain special types of services for the benefit of manufacturers and charges remuneration from them, it is undoubtedly an activity which, if carried on by private agencies, would be taxable. Why should be chamber be granted exemption for making income by methods which in the hands of other people would have been eligible to tax ? This would end up in the conclusion that a chamber of commerce may run a printing press, advertisement business, market exploration activity or even export promotion business and levy huge sums from its customers whether they are members of the organisation or not and still claim a blanket exemption from tax on the score that the objects of general public utility which it has set for itself implied these activities even though profits or surpluses may arise therefrom. Therefore, the emphasis is not on the object of public utility and the carrying of of related activity for profit. On the other hand, if in the advancement of these objects the chamber resorts to carrying on of activities for profit, then necessarily section 2(15) cannot confer cover. The advancement of charitable objects must not involve profit making activities. That is the mandate of the new amendment.

The opposite position in its extreme form is equally untenable. While Shri Sharma is right that merely because service is rendered to traders escarpment from tax liability does not follow, every type of service-oriented activity, where some charge is levied from the beneficiary and at the end of the year some surplus is left behind, decided ones not lose the benefit of section 2(15). For, then, one cannot conceive of any object of general public utility which can be advanced by the chamber of commerce. For every such activity some fee will have to be levied if the chamber is not to turn bankrupt and merely because a fee is levied once cannot castigate the activity as one for profit. Therefore, it is false dilemma to talk of activity for profit as against activity rendered free. The true demarcating line lies in between.

In our view, the ingredients essential to earn from don from tax are discernible form the definition, if insightfully, actually read against the brooding presence of the evil to be suppressed and the beneficial object to be served. The policy of the statute is to give tax relief for charitable purpose, but what falls outside the pale of charitable purpose ? The institution must confine itself to the carrying on of activities which are not for profit. It is not enough if the object be one of general public utility. The attainment of that object shall not involve activities for profit. What even is an activity for profit ? An undertaking by a business organisation is ordinarily assumed to be for profit unless expressly or by necessary implication or by eloquent surrounding circumstances the making of profit stands loudly negated. We will illustrate to illumine. If there is a restrictable provision in the bye-laws of the charitable organisation which insists that the charges levied for services of public utility rendered are to be on a "no profit" basis, it clearly earns the benefit of section 2(15). For instance, a funeral home, an S. P. C. A. or a co-operative may render services to the public but

write a condition into its constitution that it shall not charge more than is actually needed for the rendering of the services, may be it may not be an exact equivalent, such mathematical precision being impossible in the case of variables, -may be a little surplus is left over at the end of the year- the broad inhibition against making profit is a good guarantee that the carrying on of the activity is not for profit. As an antithesis, take a funeral home or an animal welfare organisation or a super-bazaar run for general public utility by an institution which charges large sums and makes huge profits. Indubitably they render services of general public utility. Their objects are charitable but their activities are for profits. Take the case of a blood bank which collects blood on payment and supplies blood for a higher price thereby making profit. Undoubtedly, the blood bank may be said to be a general public utility but if it advances its public utility by sale of blood as an activity for (making) profit, it is difficult to call its purpose charitable. It is just blood business !

In the United States, for instance, there are many funeral homes which make considerable profits. There are super-bazars and animal welfare institutions in many countries which may be run on a profit motive. Inevitably, these activities are caught in the meshes of the tax law. Ready-made nostrums like "dominant intent", "incidental profits", "real object" as against "ostensible purpose", "entangled", "wrapped in", "intertwined" and the like fails as criteria in critical cases, although they have been liberally used in judicial vocabulary. In this branch of law variable labels are convenient but not infallible. We have to be careful not to be victimised by adjectives and appellation which mislead, if pressed too far, although they may loosely serve in the ordinary run of cases.

To sum up, section 2(15) excludes from exemption the carrying on of activities for profit even if they are linked with the objectives of general public utility, because the statute interdicts, for purposes of tax relief, the advancement of such objects by involvement in the carrying on of activities for profit. We appreciate the involved language we use, but when legislative draftsmanship declines to be simple, interpretative complexity becomes a judicial necessity.

Loka Shikshana Trust is the latest-perhaps the only case of this court-dealing directly with section 2(15) of the Act. Khanna J., speaking on behalf of himself and Gupta J. observed :

"As a result of the addition of the words 'not involving the carrying on of any activity for profit' at the end of the definition in section 2(15) of the Act, even if the purpose of the trust is 'advancement of any other object of general public utility', it would not be considered to be 'charitable purpose' unless it is shown that the above purpose does not involve the carrying on of any activity for profit. The result thus of the change in the definition is that in order to bring a case within the fourth category of charitable purpose, it would be necessary to show that : (1) the purpose of the trust is the advancement of any other object of general public utility, and (2) the above purpose does not involve the carrying on of any activity for profit. Both the above conditions must be fulfilled before the purpose of the trust can be held to be charitable purpose.....

It is true that there are some business activities like mutual insurance and co-operative stores of which profit making is not an essential ingredient, but that is so because of a self-imposed and innate restriction on making profit in the carrying on of that particular type of business. Ordinarily, profit motive is a normal incident of business activity and if the activity of a trust consists of carrying on of a business and there are no restrictions on its making profit, the court would be well justified in assuming in the absence of some indication to the contrary that the object of the trust

involves the carrying on of an activity for profit.....

By the use of the expression 'profit motive' it is not intended that profit must in fact be earned. Nor does the expression cover a mere desire to make some monetary gain out of a transaction or even a series of transactions. It predicates a motive which pervades the whole series of transactions effected by the person in the course of his activity.....

We are not impressed by the submission of the learned counsel for the appellant that profit under section 2(15) of the Act means private profit. The word used in the definition given in the above provision is profit and not private profit and it would not be permissible to read in the above definition the word 'private' as qualifying profit even though such word is not there."

Beg J. spoke on the subject with different accent but drew pointed attention to one aspect

"The deed puts no condition upon the conduct of the newspaper and publishing business from which we could infer that it was to be on 'no profit and no loss' basis. I mentioned this as learned counsel for the appellant repeatedly asserted that this was the really basic purpose and principle for the conduct of the business of the trust before us. This assertion seems to be based on nothing more substantial than that the trust deed itself does not expressly make profit-making the object of the trust. But, as I have already indicated, the absence of such a condition from the trust deed does not determine its true character. That character is determined more certainly and convincingly by the absence of terms which could eliminate or prevent profit making from becoming the real or dominant purpose of the trust. It is what the provisions of the trust make possible or permit coupled with what had been actually done without any illegality in the way of profit making, in the case before us, under the cover of the provisions of the deed, which enable us to decipher the meaning and determine the predominantly profit making character of the trust."

We do not think it necessary to discuss the various decisions of the High Courts cited before us nor need we seek light from the English cases either. After all Indian law must bear Indian impress derived from Indian life.

In *All India Spinners' Association v. Commissioner of Income-tax*. Lord Wright, speaking for the Judicial Committee, and considering the subject of "charitable purposes" as justifying exemption from income-tax, observed :

"It is now recognised that the Indian Act must be construed on its actual words and is not to be governed by English decisions on the topic. 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 the irresponsibility of applying the language of the Act to the particular circumstances that emerge under conditions of Indian life."

Crypt-colonial inclinations have sometimes induced Indian draftsmen and jurists to draw inspiration from English law but, for reasons felicitously expressed by Lord Wright, we are adopting

interpretation of section 2(15) according to the language used there and against the background of Indian life.

Coming to the facts of the present case, the criteria we have evolved have to be applied.

Among the Kerala cases which went on the wrong test we wish to mention one, Dharmodayam. The assessee-company was conducting a profitable business of running chit funds and its memorandum of association had as one of its objects "to do the needful for the promotion of charity, education and industry". The court found it possible on these facts to grant the benefit of section 2(15) by a *recondite* reasoning. If this ratio were to hold good, businessmen have a highroad to tax avoidance. Dharmodayam shows how dangerous the consequence can be if the provision were misconstrued.

The true test is to ask for answers to the following questions : (a) Is the object of the assessee one of general public utility ? (b) Does the advancement of the object involve activities bringing in moneys ? (c) If so, are such activities undertaken, (i) for profit, or (ii) without profit ? Even if (a) and (b) are answered affirmatively, if clause (i) is answered affirmatively, the claim for exemption collapses. The solution to the problem of an activity being one for or irrespective of profit is gathered on a footing of facts. What is the real nature of the activity ? One which is ordinarily carried on by ordinary people for gain ? Is there a built-in-prescription in the constitution against making a profit ? Has there been in practice, profit from this venture ? although this last is a weak test. The mere fact that a service is rendered is no answer to chargeability because all income is often derived by rendering some service or other.

Further, what is an activity for profit depends on the correct connotation of the preposition. "For" used with the active participle of a verb means "For the purpose of" (See judgment of Westbury C., 1127). "For" has many shades of meaning. It connotes the end with reference to which anything is done. It also bears the sense of "appropriate" or "adapted to" : "suitable to purpose" vide Black's Legal Dictionary. An activity which yields a profit or gain in the ordinary course must be presumed to have been done for profit or gain. Of course, an extreme case could be amended where without intent or purpose an activity may yield profit. Even so, it may legitimately be said that the activity is "appropriate or adapted to such profit".

We may wind up with a brief rounding off and indication on the approach. A pragmatic condition, written or unwritten, proved by a proscription of profits or by long years of invariable practice or spelt from strong surrounding circumstances indicative of anti-profit motivation-such a condition will qualify for "charitable purpose" and legitimately get round the fiscal hook. Short of it, the tax tackle holds you fast. A word about the burden of proof is necessary here. Income, ordinarily chargeable, can be free from eligibility only if the assessee discharges the onus of bringing himself within section 2(15). In so doing, he has to attract and repel-attract the condition that his objects are of "general public utility" and repel the charge that he is advancing these objects by involvement in activities for profit. Once this broad dual basis is made out, the revenue will not go into meticulous mathematics and charge every chance excess or random surplus. If the activity is prone to yielding income and in fact results in profits, the revenue will examine the reality or presentness of the condition, that the activity is not for profit. Here, one may well say : "Suit the action to the word, the word to the action".

If such be the legal criteria for fixing charitable purpose, how does the Indian Chamber fare ? The substantial item of income comes from the share of profits in the firm called, Messrs. Calcutta Licensed Measurers. True, the issuance of weight and measurement certificate is a great facility

for traders and under the Commercial Documents Evidence Act only recognised institutions are permitted to issue such certificates. Recognition bespeaks to the status, integrity and efficiency of the institution but does not transmute a service for profit into non-profitable activity. It is irrelevant whether this service is in implementation of or interwoven with trade promotion. What is pertinent is whether the advancement of trade promotion by issuing such certificates is done for a nominal fee conditioned by the cost of the operation, and profit-making by this means is tabooed. For, there is nothing in the memorandum or articles of association which sets any limit on making a large profit this way. And, after all, any institution or individual may set up a weighment and measurement business as a source of income and if it is of sufficient probity and competence recognition may well be accorded under the Commercial Documents Evidence Act. We cannot mix up or conflate the two concepts. The activity of charging fees and issuing certificates of origin, valuable as a service though it be, is in no different position. Both these activities are amenable to tax as being carried on for profit, there being nothing to show that the chamber was undertaking this job on a "no profit" basis. The presumption, if at all, is that a businessmen's association does a business of it, more so when the facility is available to members and non-members. Not infrequently one comes across weighment stations where loaded trucks are weighed for payment as a business. So also approved values value property as business and charge for that service. Merely because it is carried on by a chamber of commerce no difference in incidence arises and tax incidence can be repelled only if the work is done explicitly on a "no profit" basis. Such is not shown to be the case here.

The objects of the chamber include settlement of dispute among traders by arbitration. This is undoubtedly a service of general public utility-preventing protracted commercial litigation. If the fee charged for doing so is more or less commensurate with the expense the chamber has to incur, a minor surplus will not attract tax. But no such restriction is written into the rules governing the chamber. It may charge a heavy sum and spend much less for hiring experts to decide the dispute. There is no magna carta binding the Indian or Cochin or Bengal Chamber of Commerce not to sell arbitral justice. Suppose a specialist in mercantile law and practice of reputable integrity offers himself regularly for arbitration of commercial disputes for a high fee, is he not making an income? The difference between the two is as between Tweedledum and Tweedledee. Surely, if an innate, articulated, restraint on the levy for these undoubted services to trade existed as a fact, so as to remove the slur of activity for profit, then the umbrella of charitable purpose would protect small surpluses.

We hold that the incomes of the chambers sought to be taxed are taxable. Civil Appeal No. 2129 of 1970 is dismissed and Civil Appeals Nos. 2455 to 2457 of 1972 are allowed. Parties will bear their respective costs.

Before parting with the case we may as well make it clear that our conclusion would have been the same even without reference to or reliance on the speech of the Finance Minister we have exerted earlier.

Civil Appeal No. 2129 of 1970 dismissed.

Civil Appeals Nos. 2455 to 2457 of 1972 allowed.

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