

Municipal Corporation of Delhi

Vs

Children Book Trust

Civil Appeal No. 2805 of 1980 and Civil Appeal No. 228 of 1990

(S. Mohan, G. N. Ray JJ)

21.04.1992

JUDGEMENT

MOHAN, J.:-

1. Both these appeals can be dealt with under common judgment since the scope of S. 115(4), Delhi Municipal Corporation Act, 1957 (hereinafter referred to as the Act) alone arises. However, it is necessary to state the facts of each case separately.

CIVIL APPEAL NO. 2805 OF 1980

2. The property known as Nehru House, No. 4, Bahadur Shah Zafar Marg, New Delhi is owned by respondent (Children Book Trust). It is a society registered under the Society's Registration Act, 1860.

From the year 1964-65 only a part of property was subject to the General Tax in accordance with the provisions of the Act. For the said year the value of the property was assessed at Rs. 8,51,480/- while the portion of the property which was exempt was valued at Rupees 5,96,870/-.

3. In the year 1970 the appellant-Corporation served a notice on the respondent proposing that the rateable value of the building should be revised. On 1st February, 1973 the Deputy Assessor and Collector of the appellant-Corporation passed an order to the effect that the rateable value of the property be revised and enhanced to Rupees 16,29,750/-. The Deputy Assessor and Collector held that the respondent had not proved its charitable character. Further, the user of the property did not go to prove that the property was used for charitable purpose and the same cannot be exempt from tax. Aggrieved by this order dated 1-2-1973, a writ petition under Arts. 226 and 227 of the Constitution was filed before the High Court of Delhi in C.W. No. 318 of 1974. The claim of the respondent, who figured as the petitioner therein, was that the withdrawal of exemption from the payment of General Tax previously enjoyed on portions of the property was wrong. It was contended that the case of the Trust was covered by S. 115(4) proviso of the Act; proviso exempts buildings from the payment of General Tax if exclusively occupied and used by a society for charitable purpose. The learned single Judge (Rajinder Sachar, J.) allowed the writ petition. He held that the Trust would be entitled to claim total exemption for payment of tax under S. 115(4) of the Act for all the portions occupied by it except which is occupied by the press namely the basement area of 11217 sq. ft. for which a monthly rental value has been assessed at Rs. 14,021.25/- and an area of 2000 sq. ft. on the ground floor rear portion for which the monthly rental value has been

fixed at Rs. 3,462.50. Even from this rental value the Trust was entitled to claim exemption in the proportion of the income accruing to it from the publication of children books etc. In the result, the impugned order of the Deputy Assessor and Collector was quashed to the above extent and the matter was remitted to him to dispose of in accordance with law and in the light of the observations made in the judgment.

4. Aggrieved by the judgment L.P.A. No. 102 of 1974 was preferred by the appellant to the Division Bench of the said Court. By a judgment and order dated 29th February, 1980 (reported in ILR (1980) 1 Delhi 534, para 14) it was held inter alia as under:-

"Suffice it is to say that 'education' cannot be understood in the limited sense of teaching being given by holding classes or by delivery of lectures. The acquisition of information or knowledge, from whatever source and in any manner has to be regarded as education. The Library, Dolls Museum and holding of exhibitions help in providing an opportunity to acquire information and knowledge. Premises used for such purposes would be regarded as being used for education and thus for charitable purposes."

5. In this view the Division Bench held that, because of the mandatory provisions of sub-sec. (5) of S. 115 no part of the premises in occupation of the press in the basement and the area of 2,000 sq. ft. on the ground floor rear portion for which the monthly rental value has been fixed at Rs. 17,483.75 / - could be exempt from tax. The judgment of the learned single Judge in this regard could not be sustained. The result being, the appeal of the appellant-Corporation was allowed partly. Under these circumstances, the Municipal Corporation of Delhi has come up in appeal. By an order dated 26-11-1980 special leave was granted. Hence Civil Appeal No. 2805 of 1980.

CIVIL APPEAL NO. 228 OF 1990

6. The appellant-Society is registered under the Society's Registration Act, 1860. When there was a proposal by the Deputy Assessor and Collector to assess the Society for the General Tax, the appellant-Society claimed that it was a Society for charitable purpose and, therefore, no tax could be levied on its building since the exemption under sub-sec. (4) of S. 115 of the Act would be applicable to it. This contention was rejected. The ultimate order of assessment is of 4th of November, 1988 whereby the respondent imposed the property tax of Rs. 5,32,683/- by assessing the rateable value.

7. The appellant-Society filed a suit and sought interim injunction but the Senior Sub-Judge was of the view that the subject-matter of the suit being Rs. 5,32,683/- he could not entertain the suit. Therefore, on 24-12-1988 the appellant withdrew the suit with liberty to file a fresh petition. Thereupon, the appellant Society filed Civil Writ Petition No. 263 of 1989 challenging the assessment order dated 4th November, 1988 in the High Court of Delhi. That was heard by a Division Bench. By a judgment dated 9th February, 1989 (reported in AIR 1989 Delhi 266) it was held that the exemption claimed by the appellant was unavailable to it. Therefore, the case was not covered by S. 115(4) of the Act. Accordingly, finding no infirmity in the order of assessment the writ petition was dismissed in limine. By an order dated 23rd January, 1990 special leave having been granted, this appeal is before us.

8. We will now advert to the arguments addressed in Civil Appeal No. 228 of 1990 since the main arguments were addressed by Mr. Harish Salve, learned counsel for the appellant. The appellant is a

Public School called Green Field School. It is recognised under Delhi School Education Act, 1973 and the Rules made thereunder. The conditions for recognition are:-

(i) The Society must run the School.

(ii) The Society must maintain its accounts.

9. The Society in this case owns a building. Therefore, the building which houses the School, whether exempt from tax is the issue. The tests to be applied under S. 115(4) are two in principle.

(i) Society must be a charitable society.

(ii) Use must be for a charitable purpose.

In the submission of the learned counsel, the proviso does not lay down the quantitative test in relation to voluntary contribution but only qualitative test.

10. Education per se is a charitable purpose. Therefore, even if the School charges a fee, that would be irrelevant. The Society must satisfy the following conditions:

(i) That it is supported by voluntary contributions;

(ii) applies its own income to promote its objects; and

(iii) it does not pay dividend to any other members.

11. Two classes of societies could be thought of.

(i) Where members receive full value for their contribution.

(ii) Society for private gain.

12. For the application of S. 115(4) two tests are :

(i) In relation to explanation education per se charity.

(ii) In relation to the proviso descriptive in nature.

13. Therefore, one has to look at the memorandum of objects and the bye-laws. if the object is charitable one, that would be enough. It makes little difference as to how the funds are utilised. Secondly, if the byelaws do not provide for the payment of dividend, that again is descriptive on the same line of reasoning where the proviso says "is supported wholly or in part by voluntary contributions", which means it has no found. It does not matter how the accounts are drawn.

14. The learned counsel strenuously urged that the statutory setting in which S. 115(4) has to be construed must be kept in the background. He draws our attention to S. 4 of Delhi School Education Act, 1973, which prescribes the conditions under which a School could be recognised. Again S. 5 provides for scheme of management. S. 17(3) makes it obligatory on the Manager to file with the Director a full statement of the fees to be levied by the School. It further provides that no fee shall be levied except with the prior approval of the Director. No fee in excess of the fee specified by the Manager could be levied. S. 18(3) talks of recognition under aided school fund.

15. The Rules made under the Delhi School Education Act, 1973, also have a great bearing. Rule 50 lays down elaborately the conditions for recognition. Cl. (i) of the said Rule requires that the School is run by a Society. Cl. (iv) says that the School shall not be run for profit to any individual or group or association. Cl. (ix) stipulates that the School building shall not be used for any other purpose.

16. Chapter XIV of the Rules deals with the School funds. Rule 172 requires the Trust or the Society not to collect fees.

17. Rule 173 stipulates the requirement for the maintenance of the School fund. It inter alia provides:

- (i) School funds shall be kept separately.
- (ii) It cannot run for profit.
- (iii) The Society cannot draw from School funds.

18. Rule 177 clearly lays down the manner in which the funds realised by unaided recognised schools are to be utilised.

19. Thus, according to learned counsel, in construing the scope of S. 115(4), all these provisions will have to be adverted to and then the tests must be formulated. The next question is whether education per se is charity. The leading case on this subject is special Commissioners of Income-tax v. Pemsel (1891) 3 Tax Cas 53 at p. 96. Again in King v. Commissioners for Special Purposes of the Income-tax (1909) 5 Tax Cas 408 at p. 414, it was laid down that a trust for advancing of education would be charitable in nature. The dictum laid down in Abbey v. Malvern Wells, Ltd. v. Minister of Town and Country Planning (1951) 2 All ER 154 at p. 161, squarely applies to the facts of this case. Therefore, it is beyond dispute that the Society is engaged in a charitable purpose.

20. The learned counsel further relies on the Trustees of the 'Tribune' (1939) 7 ITR 415: (AIR 1939 PC 208), particularly at pages 422-423 (of ITR) : (at p. 211 of AIR); All India Spinners' Association v. Commr. of Income-tax, Bombay (1944) 12 ITR 482 : (AIR 1944 PC 88) and the propositions stated at pages 488-489 and Commr. of Income-tax, Bombay City v. Beach Candy Swimming Bath Trust, Bombay (1955) 27 ITR 279 at pages 288-289: (AIR 1955 Bom 250 at p. 253). Therefore, according to him, the only essential factor to determine whether it is a charity or not would be to find out whether there is any private gain by setting up of the institution. This was the test adopted in Addi. C.I.T.,Gujarat v Surat Art Silk Cloth Manufacturers Association, (1980) 121 ITR 1 at Pp. 1 and 24 : (AIR 1980 SC 387 at pp. 393 and 401).

21. Therefore, if there is no private gain; if the Society cannot utilise the funds as the rules under the Delhi School Act state, as long as there is no profit it is charitable. The essential test of a charitable purpose is the destination of profits. If the profits continue to feed the charity, the mere occurrence of profits would not detract from the charitable nature of the enterprise. The proviso under S. 115(4) prescribes three qualitative tests for identifying charitable societies. These tests relate to the nature and the character of the societies and not to its actual transactions in any particular year or group of years.

22. When the proviso uses the words "supported wholly or in part by voluntary contributions," the test for ascertaining the same would be:

(i) Does a Society rely upon voluntary contributions ultimately to meet the deficits, if any, which may arise in its capital or revenue account?

(ii) Does the Society rely upon voluntary contributions to finance its capital outlays to the extent such outlays exceed its savings and borrowings?

23. The test is essentially qualitative in nature. It is that test which is commended for acceptance by us. The learned counsel further states that the advantages of applying the qualitative test would be:

(i) By a series of decisions it has been held that mere generation of profits would not detract from the charitable nature of society so long as the profits continue to feed the charity and are not diverted to either non-charitable or private purpose.

(ii) It would conform to the interpretation adopted by English Courts on similar expressions used in statute., which are *pari materia*.

(iii) It would afford a definite and a reliable test for identifying the exempt societies.

(iv) It would do away with the artificial distinction between societies which are efficiently run and generate a surplus and others which run into deficits.

24. On the contrary if the quantitative test is applied it may lead to arbitrariness and anomalies. In a particular year, in order to meet its expenses, the society may depend upon voluntary contributions while in the succeeding year it may not any longer depend. It is also impossible to adopt a number of years or a particular year as yardstick to determine whether the society satisfies the conditions enumerated in the proviso. This becomes further apparent when it is applied to the second and third parts of the proviso.

25. Where the bye-laws of a society permit application of profits for private purpose or payment of dividend to its members that undoubtedly would be disqualified from claiming exemption As laid down in *Girls Public Day School Trust Ltd. v. Minister of Town and Country* (1951) 1 Chancery 400 the object of the proviso when it insists on support by voluntary contribution wholly or in part, is to disqualify mutual benefit societies. Voluntary contributions would, therefore, mean contributions other than those made by beneficiaries of the services. Reliance is placed on the *Overseers of the Poor and Chapelwarden of the Royal Precinct of the Savoy in the County of London v. Art Union of London*, 1896 AC 296 at p. 310 and *Institution of Mechanical Engineers v. Cane* (Valuation Officer) (1960) 3 All ER 715. The last submission of the 'learned counsel is the expression "support" does not, in any manner, connote sustenance otherwise it would not make even partial support to qualify for exemption. The word "support", therefore, must mean which enriches the society itself or relieves it of a burden or furthers its objects or powers as laid down in *Cane* (Valuation Officer) v. *Royal College of Music* (1961) 2 QB 89 at pp. 120 121. Thus it is submitted that the approach of the High Court is incorrect and warrants interference.

26. Mr. B. Sen, learned counsel for the respondent in reply to the arguments of the appellant would urge that S. 115(4) is a peculiar section which provides for relief to those societies or bodies carrying on charitable support either fully or in part. The proviso of the Delhi Municipal Corporation Act distinguished itself from other enactments. The legislative intent is to narrow down the clauses of exemption.

27. The Municipal General Tax is an annual tax. The question of assessability to such tax or

exemption will, therefore, have to be determined each year. Therefore, unless and until the society satisfies the assessing authority that it fulfils the conditions for exemption in respect of that particular year, it cannot claim exemption as a rule. Therefore, the facts in each case will have to be ascertained in each year. Similar is the method adopted under the Income-tax Act in respect of assessment of societies under Ss. 11 and 13 of the said Act or even with regard to exempting donations to charitable societies under S. 80G.

28. One other method will be to decide with reference to the overall position of the society or body over a period of 4 or 5 years. This was the method adopted in *Brighton College v. Marriott* (H. M. Inspector of Taxes) (1926) 10 Tax Cas 213. Similar was the test adopted in the case of *Southwell (Surveyor of Taxes) v. Governors of Holloway College* (1895) 3 Tax Cas 386 while determining whether it fell within the concept of a charitable school within the meaning of erratic statute.

29. It is conceivable that a society may depend upon voluntary contributions for a number of years. But, in a given year it might not be able to generate a small surplus. In such a case it might be entitled to exemption. On the contrary, where the surplus is generated in a systematic manner, year after year, it will lose its character as a society supported by voluntary contributions.

30. The word "supported" must mean sustenance. Where the society does not depend upon voluntary contributions for its sustenance it cannot have the benefit of the proviso. The expression "wholly or in part" when read in the context of "supported" would mean that there could be a society which would depend upon wholly on voluntary contributions for its sustenance, that is for the expenses of carrying on its activities. The word "part" means a society may have some income of its own. Still it could claim the benefit of exemption if it is not sufficient for its maintenance and it has to be supplemented by voluntary contributions. In other words, the test to be applied is whether the society can survive without voluntary contributions even though it may have some income of its own. As regards the part, it would depend upon the facts of each case. The submission is that it must be a substantial part as laid down by this Court in a case arising out of Land Acquisition Act; *Smt. Somavanti v. State of Punjab* (1963) 2 SCR 774: (AIR 1963 SC 151).

31. When the section talks of contribution it must be given its proper meaning. Such a contribution must be voluntary. Therefore, a voluntary contribution is not made under compulsion. Equally, it should not be made under any kind of apprehension that some adverse consequences, would follow if such a contribution is not made. Equally, if a contribution is not made in return for any benefit except incidental, it would be entitled to the benefit. In support of the submission, the learned counsel relied on *F.orbes (Surveyor of Taxes) v. Standard Life Assurance Company* (3 Tax Cases 268 at p. 272) and *Institution of Mechanical Engineers* (1960 (3) All ER 715) (supra). On the basis of these, it is submitted that any donation paid at the time of admission cannot be treated as voluntary.

32. The argument, that the transfer of funds to the society by the school can be regarded as voluntary contribution received by the society is wrong. The Delhi School Education Act does not create the school into a specific juristic entity different from the society. The Act only makes regulations in the matter of running the school and the service conditions of the employees. Indeed, the Act itself imposes a condition that the school must be run by a society or a body under Rule 50. Further, the Managing Committee of the school shall act under the control and supervision of the society which runs the school. Consequently, if the funds of the school were transferred to the society, it would only amount to transfer of funds from one account to another, both under the control of the same society.

33. Under S. 115(4) if the society were to run education as a trade or business, even in such a case, the benefit of exemption will be lost, as laid down in Brighton College case (1926 (10) Tax Cas 213) (supra).

34. It cannot be urged as an axiomatic proposition that imparting education would be a charitable purpose per se. Pemsel's case (1891 (3) Tax Cas 53) (supra) no doubt continues to hold the field in England. A careful reading of the judgment will disclose that there must be an element of public benefit or philanthropy that was what was stressed by each of the Law Lord. Therefore, while applying the ratio under the Delhi Municipal Corporation Act one cannot straightway adopt the views expressed in England. Here, the definition is somewhat circumspect. Hence, it must be viewed with reference to the objects to be achieved by a particular statute. Therefore, education per se cannot be regarded as a charitable object otherwise even if education was carried on with a view to make profit, to call it a charity, would be unreasonable. Hence, it is submitted that the concept of a public benefit will have to be introduced. If that is done, "education" under S. 115(4) must be interpreted ejusdem generis. Therefore, it ought to be understood as having some element of relief to the public at large or public benefit.

35. The learned counsel refers to the balance sheet and states that the donations to the school have been credited to the society's accounts. The term "fees" appropriated by the society is reflected in the balance sheet which clearly shows that there have never been two separate entities as is sought to be made out now.

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36. Mr. B. Sen, Sr. Advocate for the appellant-Corporation would submit that respondent-Book Trust was established on 7-5-1957. The building was constructed during the years 1961-65. Part of the building has been let out in 1970-71. The rental income is Rs. 86,632.80 per mensem. The Children Book Trust has:-

- (a) Delhi Office
- (b) Printing Press
- (c) Dolls Museum
- (d) Library
- (e) Singer Institution.

37. For the years 1964-65 and 1969-70 exemption from property tax was granted since the respondent was depending on the Government grants. However, in 1971 notice, making the demand for property tax was issued with regard to the portion which had been rented out to the press. Admittedly, no exemption could be claimed concerning this portion. It is only the other portions which are relevant for the purpose of the case. The High Court in its judgment while interpreting S. 115(4)(a) proviso has held that, because of the use of words "in part" in the proviso the society would be entitled to claim exemption provided other conditions are satisfied if it is able to show that it has received even a small amount of voluntary contribution.

38. It is this finding which is objected to by the appellant. The society cannot pay the tax, is the test to be adopted. In other words, to claim the exemption it must be shown that the society is supported

by the voluntary contribution. Where the activity of the society generates income to support itself and, therefore, the society does not any longer depend on the voluntary contribution, certainly the exemption should be made unavailable. From this point of view, the finding, that even if it receives a small contribution irrespective of the fact whether it is able to support or not, is not the correct test. It is this aspect of the matter which requires to be clarified and the law settled by this Court.

39. Mr. G. B. Pai, learned counsel for the respondent-Trust submits that the broad purpose of S.,1 15 is to exempt charity. There may be two types of voluntary contributions:

(i) From the society

(ii) From third parties

40. The object of the section is to help the charitable institutions. The sine qua non is non-distribution of profits. Once that test is answered the rest becomes immaterial. In support of this submission, the case in P.C.Raja Ratnam Institution v. Municipal Corporation of Delhi, 1990 Supp SCC 97: (AIR 1990 SC 816) is relied on. Lastly, it is submitted that the proviso must be read down to find out as to how the income is realised and whether there is non-payment of dividends to the members. That would be in consonance with the object of the section, granting exemption to those who are engaged in charitable purpose. Certainly, it cannot be contended that imparting of education is not a charitable purpose. The leading case on this aspect is Pemsell's case (1891 (3) Tax Cas 53) (supra).

41. The learned counsel for the intervenors (the petitioners in W.P. No. 1754 of 1979) draws our attention to S. 115(4) and submits that exemption would be available if the following tests were satisfied:-

(i) Lands or buildings or portion thereof.

(ii) Exclusive occupation and use.

(iii) Such user must be by a society or body.

(iv) For the charitable purpose.

(v) Charitable purpose includes education, relief of poor and medical relief.

(vi) Such a society is supported wholly or in part by voluntary contributions.

(vii) Applies its profit to itself for furtherance of the objects of the society.

(viii) In promoting its objects.

(ix) It does not pay dividend or bonus to its members.

42. In this case, elements (vi), (v) and (vi) are in dispute. It must be held education per se charity. However, it is not contended that the taxing authority is precluded from going into the question whether the society is imparting education and thereby is pursuing a charitable object.

43. It is further submitted that the voluntary support talked of under section must be qualitative in

nature and not quantitative. In *Cane (Valuation Officer)* (1961 (2) QB 89) (supra) is what is relied on for advancing this proposition. In that case, the test that was laid down was; (1) that enriches the Corporation itself or (2) relieves it of a burden or (3) furthers its objects or powers.

44. *British School of Egyptian Archaeology, Murray v. Public Trustee* (1954) 1 All ER 887 is a case which deal with the quid pro quo nature of voluntary contribution. Therefore, it is submitted if the Court were to adopt the test whether voluntary contributions provide the life line, such a test would be violative of Art. 14. When property tax exemption was granted for aided schools and such exemption was denied to non-aided schools it was held to be discriminatory in *Baldwin Girls' High School, Bangalore v. Corporation of the City of Bangalore*, AIR 1984 Kant 162.

45. Before we deal with the respective contentions we think it necessary to provide the background in relation to the municipality and the power of taxation. Every municipality is a local self-Government. Therefore, in order that it may sustain itself a power of taxation has been delegated to municipal bodies. The taxes are local taxes for local needs. Such taxes must obviously differ from one municipality to another. It is impossible for the Legislature to pass statute for the imposition of such taxes in local areas. In a democratic set up the municipalities which need the proceeds of these taxes for their own administration, it would be but proper to leave to these municipalities the power to impose and collect taxes.

46. The local authorities do not act as Legislature when they impose a tax but they do so as the agent of State Legislature. The powers and the extent of these powers must be found in the statute which creates them with such powers.

47. Local bodies being subordinate branches of governmental activities are democratic institutions managed by the representatives of the people. They function for public purpose. They bear the burden of Government affairs in local areas as they are required to carry on local self-Government. The power of taxation is a necessary adjunct to their other powers. There are various kinds of taxes provided under each Municipal Act, importantly, property tax.

48. Now, we come to Section 114 of the Act. Sub-section (i) of the said Section reads:-

"Save as otherwise provided in this Act, the property taxes shall be levied on lands and buildings in Delhi and shall consist of the following, namely.-

(a) to (c) ❖ ❖ ❖ ...

(d) general tax.

(i) & (ii) ❖ ❖ ❖ ❖

Explanation:- Where any portion of a land or building is liable to a higher rate of the general tax such portion shall be deemed to be a separate property for the purpose of municipal taxation.

The Corporation may exempt from the general tax lands and buildings of which the rateable value does not exceed one hundred rupees."

49. While dealing with the premises in respect of which property taxes are to be levied sub-section (4)(a) of S. 115 states:

"(4) Save as otherwise provided in this Act, the general tax shall be levied in respect of all lands and buildings in Delhi except -

(a) lands and buildings or portions of lands and buildings exclusively occupied and used for public worship or by a society or body for a charitable purpose:

Provided that such society or body is supported wholly or in part by voluntary contributions, applies its profits, if any, or other income in promoting its objects and does not pay any dividend or bonus to its members.

Explanation : "Charitable purpose" includes relief of the poor, education and medical relief but does not include a purpose which relates exclusively to religious teaching:

(b) & (c)..... .."

(Emphasis supplied)

50. It is the scope of the sub-section that has to be determined in these two cases.

51. Sub-section (5) of Section 115 provides:-

"(5) Lands and buildings or portions thereof shall not be deemed to be exclusively occupied and used for public worship or for a charitable purpose within the meaning of clause (a) of sub-section (4), if any trade or business is carried on in such lands and buildings or portions thereof or if in respect of such lands and buildings or portions thereof, any rent is derived."

Sub-section (6) of Section 115 provides:-

"(6) Where any portion of any land or building is exempt from the general tax by reason of its being exclusively occupied and used for public worship or for a charitable purpose such portion shall be deemed to be a separate property for the purpose of municipal taxation."

52. Therefore, after providing for exemption under sub-sections (4) and (5) Section 115 categorises cases, which will lose the exemption under sub-section (4). Again, Sub-section (6) clarifies that a part of a building in the occupation of a society may not be entitled to exemption though the other part is clearly exempt.

53. By a reading of the above, it is clear that sub-section (4) of Sec. 115 provides that general tax shall be levied in respect of all lands and buildings except those lands and buildings or part of lands and buildings which are exclusively occupied and used (i) for public worship or (ii) by society or body for charitable purpose.

54. The conditions for claiming exemption under sub-section (4) are:-

(i) The lands and buildings or portions of lands and buildings, in respect of which exemption is claimed shall be exclusively occupied by a society or a body and used for a charitable purpose.

(ii) Such society or body must be supported wholly or in part by voluntary contributions. (iii) It must apply its profit, if any, or other income for promoting its objects.

(iv) It must not pay any dividend or bonus to its members.

55. In the Explanation as to what is charitable purpose is stated in an inclusive manner, relief of the poor, education and medical relief. In the present case, the questions which arise for our determination are:

(i) Whether the society or body is occupying and using the land and building for a charitable purpose within the meaning of Sub-section (4)?

(ii) What is the meaning of the expression "supported wholly or in part by voluntary contribution"?

(iii) Whether any trade or business is carried on in the premises within the meaning of sub-section (5)?

56. We will first take up the case Of Civil Appeal No. 228 of 1990.

57. The appellant-Society is a society registered under the Society's Registration Act. It is engaged in running the school known as Green Field School. This school is recognised private unaided school. The school is run in a building owned by the appellant-Society. Mr. Harish Salve, learned Counsel for the appellant draws our attention to the Delhi School Education Act, 1973 and the Rules framed thereunder, in order to appreciate the statutory setting in which Section 115(4), according to him, is to be construed.

58. As far as Delhi School Education Act is concerned we will refer to Section 18(3). It reads as follows:

"(3)The manager of every recognised school shall, before the commencement of each academic session, file with the Director a full statement of the fees to be levied by such school during the ensuing academic session, and except with the prior approval of the Director, no such school shall charge, during that academic session, any fee in excess of the fee specified by its manager in the said statement."

Section 18(3) talks of unaided school like the present and its school fund, which is extracted below:

"(3) In every recognised unaided school, there shall be a fund, to be called the "Recognised Unaided School Fund", and there shall be credited thereto income accruing to the school by way of -

(a) fees,

(b) any charges and payments which may be realised by the school for other specific purposes, and

(c) any other contributions, endowments, gifts and the like."

59. Sub-sec. (4) states as under:-

"(4) (a) income derived by unaided schools by way of fees shall be utilised only for such educational purposes as may be prescribed; and

(b) charges and payments realised and all other contributions, endowments and gifts received by the school shall be utilised only for the specific purpose for which they were realised or received."

60. Rule 50 of the Rules framed under this Act stipulates the conditions for recognition. The important conditions for our purpose are:-

(i) the school is run by a society registered under the Societies Registration Act, 1860 (21f 1860), or a public trust constituted under any law for the time being in force and is managed in accordance with a scheme of management made under these rules;

(iv) the school is not run for profit to any individual, group or association of individuals or any other persons; and

(ix) the school buildings or other structures of the grounds are not used during the day or night for commercial or residential purposes (except for the purpose of residence of any employee of the school) or for communal, political or non-educational activity of any kind whatsoever."

61. Under Rule 59(2)(q) it is specifically stated that the Management Committee shall be subject to the control and supervision of the trust society by which such school is run.

62. Now, we come to Chapter XIV which relates to school fund. Rules 172 and 177 may be quoted:-

"172. Trust or society not to collect fees, etc., schools to grant receipts for fees, etc., collected by it - (1) No fee, contribution or other charge shall be collected from any student by the trust or society running any recognised school; whether aided or not.

(2) Every fee, contribution or other charge collected from any student by a recognised school, whether aided or not, shall be collected by the school for every collection made by it.

173. School fund how to be maintained -

(1) Every School Fund shall be kept deposited in a nationalised bank or a scheduled bank, any post office in the name of the school.

(2) Such part of the School Fund as may be approved by the Administrator, or any officer authorised by him in this behalf, may be kept in the form of Government securities.

(3) The Administrator may allow such part of the School Fund as he may specify in the case of each school, (depending upon the size and needs of the school) to be kept as cash in hand.

(4) Every Recognised Unaided School Fund shall be kept deposited in a nationalised bank or a scheduled bank or in a post office in the name of the school and such part of the said Fund as may be specified by the Administrator or any officer authorised by him in this, behalf shall be kept in the form of Government securities and as cash in hand respectively.

Provided that in the case of an unaided minority school, the proportion of such Fund which may be kept in the form of Government securities or as cash in hand shall be determined by the managing committee of the school."

63. Rule 177 deals with utilisation of the fees realised by unaided recognised schools. In sub-rule (1) it is stated :-

(1) Income derived by an unaided recognised school by way of fees shall be utilised in the first instance for meeting the pay, allowances and other benefits admissible to the employees of the school:

Provided that savings, if any from the fees collected by such school may be utilised by its managing committee for meeting capital or contingent expenditure of the school, or for one or more of the following educational purposes, namely:-

(a) award of scholarships to students;

(b) establishment of any other recognised school, or

(c) assisting any other school or educational institution, not being a college, undermanagement of the same society or trust by which the first mentioned school is run."

64. In this background, we will consider whether education per se is a charitable purpose and its application to the appellant society. The case relied on strongly is *Pemsel* (1891 (3) Tax Cas 53) (supra). The dictum of Lord Macnaghten at page 96 is as follows:-

"Charity" in its legal sense comprises four principal divisions: trusts for the relief of poverty, trusts for the advancement of education, trusts for the advancement of religion, and trusts for other purposes beneficial to the community not falling under any of the preceding heads. The trusts last referred to are not the less charitable in the eye of the law because incidentally they benefit the rich as well as the poor, as indeed every charity that deserves the name must do, either directly or indirectly."

65. One thing that is clear is that each of the Law Lords emphasised the underlying ideas of charity involving an element of philanthropy or something derived from pity of early times as being the fundamental of the concept of charity. Lord Bramwell at page 83 states:

"I think a "charitable purpose" is where assistance is given to the bringing up, feeding, clothing, lodging, education of those who from poverty or comparative poverty, stand in need of such assistance."

Again, Lord Herschell at page 88 observed:

"It is the helplessness of those who are the objects of its care which evokes the assistance of the benevolent. I think, then, that the popular conception of a charitable purpose covers the relief of any form of necessity, destitution, or helplessness which excites the compassion or sympathy of men, and so appeals to their benevolence for relief."

66. Therefore, an element of public benefit or philanthropy has to be present. The reason why we stress on this aspect of the matter as if education is run on commercial lines, merely because it is a school, it does not mean it would be entitled to the exemption under Section 115(4) of the Act.

67. The next case to which reference can be made is *The King v. The Commissioners for Special Purposes of the Income-tax*, (1909) 5 Tax Cas 408. The question arose whether the University College of North Wales could be held as established for charitable purposes. Fletcher Moulton, L.J. relying on *Pemmsel's case* (supra) held that a trust for advancement of education was charitable.

68. In *The Abbey, Malvern Wells Ltd.* (1951) (2) All ER 154 (supra) it is observed at pages 160-161 :-

"In the present case, it seems to me that one is entitled, and, indeed, bound, to look at the constitution of the company to see who, in fact, is in control. I find that, by Art. 3 of the company's Articles, the company is controlled entirely by a body called a council, a body of persons, and, by Art. 64, that body of persons must be the trustees of the trust deed. Therefore, while the company, theoretically, has the power to apply its property and assets for the purpose of making profits and devoting the resulting profit to the distribution of dividends among the members, I find that the persons who regulate the operations of the company are not free persons unrestricted in their operations, but are the trustees of the trust deed, and, under the terms of the trust deed, they may use the property of the company only in a particular way and must not make use of the assets of the company for the purpose of a profit-making concern. I find that they are strictly bound by the trusts of the trust deed, and that those trusts are charitable trusts. It seems to me, therefore, that, while nominally the property of the company is held under the provisions of the memorandum and articles of association, in actual fact the property of the company is regulated by the terms of the memorandum and articles of association plus the provisions of the trust deed, and, therefore, the company is restricted in fact in the application of its property and assets and may apply them for the charitable purposes which are mentioned in the trust deed."

69. Relying on this passage it is contended on behalf of the appellant that the position is exactly the same in the instant case. The submission is where the society's building houses, the school which is imparting education, it being a charitable purpose, the exemption would apply. We will consider this aspect of the matter after referring to the Indian cases.

70. In *The Trustees of the Tribune* (7 ITR 415: AIR 1939 PC 208) (supra) at pages 422-423 (of ITR): (at p. 211 of AIR) it is observed:

"In the High Court stress was laid by the learned Chief Justice and by Addison, J., on the fact that the Tribune newspaper charges its readers and advertisers at ordinary commercial rates for the advantages which it affords. As against this the evidence or

findings do not disclose that any profit was made by the newspaper or press before 1918 and it is at least certain that neither was founded for private profit whether to the testator nor any other person. By the terms of the trust it is not to be carried on for profit to any individual. It cannot in their Lordships' opinion be regarded as an element necessarily present in any purpose of general public utility, that it should provide something for nothing or for less than it costs or for less than the ordinary price. An eleemosynary element is not essential even in the strict English view of charitable uses (*Commissioners v. University College of North Wales* (1909 (5) Tax Cas 408))."

71. In *All India Spinners' Association*, (1944 12 ITR 482) at page 483: (AIR 1944 PC 88) (*supra*) it is observed:

"Section 4(3) of the Indian Income-tax Act gives a clear and succinct definition of "charitable purposes" which must be construed according to its actual language and meaning. Lord Macnaghten's definition of charity and English decisions on the law of charities have no binding authority on its construction and though they 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 difference in language, particularly the inclusion in the Indian Act of the word "public" is of importance.

The constitution of Section 4(3) is obviously a question of law, but so also is the question what is the real purpose of an Association. The Court must make its decision on the latter point on the basis of the facts found on it, but given the facts the question is one of law. Where the principal fact is the constitution of the Association the true construction of the constitution for finding out its purpose is a question of law.

The words "general public utility" in Section 4(3) are very wide words. They would exclude the object of private gain, such as an undertaking for commercial profit though all the same it would subserve general public utility."

72. In *Commissioner of Income-tax, Bombay City* (1955 (27) ITR 279: AIR 1955 Bom 250) (*supra*), it was observed at page 289 (of ITR): (at p. 253 of AIR):

"A settlor or a donor may make a charity by setting up an institution and also providing funds by which those who take advantage of the institution can do so without paying any charge; or we may have a case where the charity may not go to those limits and one may confine his charity to merely setting up the institution and providing that those who wish to take advantage of the institution must pay reasonable charges for the same. In both cases the setting up of the institution would be a charitable object if the institution serves a purpose of general public utility. The only essential factor to determine whether it is a charity or not would be whether there is any private gain by the setting up of the institution. If the gain derived by running the institution continues to be impressed with the trust which is a charitable trust, then it is immaterial whether the institution is run as a commercial institution or not, but if in the running of the institution profits are made and the profit goes to any private individual or if the institution is intended for any private gain, then

undoubtedly the running of the institution could not be considered as being run for a charitable object."

73. In *Addl. C.I.T. v. Surat Art Silk Cloth Asscn.*, 121 ITR 1 at 24 : (AIR 1980 SC 387 at p. 401), it is observed:

"Where an activity is carried on as a matter of advancement of the charitable purpose or for the purpose of carrying out the charitable purpose, it would not be incorrect to say as a matter of plain English grammar that the charitable purpose involves the carrying on of such activity, but the predominant object of such activity must be to subserve the charitable purpose and not to earn profit. The charitable purpose should not be submerged by the profit-making motive; the latter should not masquerade under the guise of the former."

74. In view of the above rulings it would be clear that where the predominant object is to subserve charitable purpose and not to earn profit it would be a charitable purpose. However, the argument of the appellant is as per the Delhi School Education Act and the Rules framed thereunder, if the society cannot utilise the fund and the school cannot be run for private gain in the absence of any profit, it would be a charitable purpose.

75. We have already seen that merely because education is imparted in the school, that by itself, cannot be regarded as a charitable object. Today, education has acquired a wider meaning. If education is imparted with a profit motive, to hold, in such a case, as charitable purpose, will not be correct. We are inclined to agree with Mr. B. Sen, learned Counsel for the Delhi Municipal Corporation in this regard. Therefore, it would necessarily involve public benefit.

76. The rulings arising out of Income-tax Act may not be of great help in the Income-tax Act "charitable purpose" includes the relief of the poor, education, medical relief and the advancement of any other object of general public utility. The advancement of any other object of general public utility is not found under the Delhi Municipal Corporation Act. In other words, the definition is narrower in scope. This is our answer to question No. 1.

77. The second important aspect is society or body is supported wholly or in part by voluntary contributions. Reliance is placed on *The Overseers of the Poor and Chapelwarden of the Royal Precinct of the Savoy in the Country of London* (1896 AC 296) (supra). At page 310 it is observed:

"The expression "supported by voluntary contributions" has long been well known in connection with hospitals and other institutions, I think the essential idea conveyed by them is that the payments are a gratuitous offering for the benefit of others, and not the price of an advantage purchased by the contributor."

78. But this case is not helpful because it turned on the meaning of "voluntary".

79. The test according to the appellant to determine voluntary contributions is qualitative and not quantitative. We will examine the correctness of this submission. The Delhi Municipal Corporation Act of 1957 insofar as it grants an exemption under Section 115(4) makes a departure from the other statutes of similar kind. As a matter of fact, the learned Counsel have provided us with the relevant provisions of the various municipal statutes of the other States. Only the Delhi Municipal Corporation Act and Kerala Act adopt this pattern of exemption. Therefore, unlike the other Acts relating to municipalities of the various other States, the legislative intent appears to be to narrow

down the nature off exemption.

80. It cannot be gainsaid that the municipal general tax is an annual tax. Therefore, normally speaking, the liability for taxation must be determined with reference to each year. In other words, the society claiming exemption will have to show that it fulfils the conditions for exemption each year. If it shows, for example, that for iis. support it has to depend on, either wholly or in part, voluntary contributions, in that particular year, it may be exempt. But where in that year, for its support, it need not depend on voluntary contributions at all or again if the society produces surplus income and excludes the dependence on voluntary contributions, it may cease to be exempt. Of course, the word "support" will have to mean sustenance or maintenance. Only to get over this difficulty that the qualitative test is pressed into service. We would consider the reasonable way of giving effect to the exemption, will be to take each case and assess for a period of five years and find out whether the society or body depends on voluntary contributions. Of course, at the end of each five year period the assessing authority could review the position. In other words, what we want to stress is, ,where a society or body is making systematic profit, even though that profit is utilised only for charitable purposes, yet it cannot be said that it could claim exemption. If, merely qualitative test is applied to societies, even schools which are run on commercial basis making profits would go out of the purview of taxation and could demand exemption. Thus, the test, according to us, must be whether the society could survive without receiving voluntary contributions, even though it may have some income by the activities of the society. The word "part" must mean an appreciable amount and not an insignificant one. The "part" in other words, must be substantial part What is substantial would depend upon the facts and circumstances of each case.

81. The word "contribution" used in the proviso must also be given its due meaning. It cannot be understood as donations. If that be so, a voluntary contribution cannot amount to a compulsive donation. If the donor, in order to gain an advantage or benefit, if he apprehends that but for the contribution some adverse consequence would follow, makes a donation certainly it ceases to be voluntary.

82. Therefore, we conclude that the test to be applied is not merely qualitative but quantitative as well.

83. The last aspect of the matter is utilisation of the income in promoting its objects and not paying any dividend or bonus to its members. The learned Counsel for the appellant and the intervenor would urge that on the basis of Cane (Valuation Officer) (supra), (1961) 2 QB 89, the position in the instant case is the same. At page 121 the following observation is found:

"One, I think, that enriches the corporation itself or relieves it of a burden or furthers its objects or powers."

84. In the light of the above discussion, we will analyse the position in the context of the Delhi School Education Act and the Rules, since the school is regulated by these statutory provisions. The school no doubt is run by a registered society as required under Rule 50. It is managed in accordance with the scheme of management as provided under the Rules. However, Rule 59, sub-rule 2(q) which has already been extracted clearly lays down that the managing committee shall be subject to the control and supervision of the trust or society by which the school is run. Rule 177 which we have quoted above requires the utilisation of the income only for the purposes mentioned in that rule. Therefore, it would be clear that the rules do not contemplate the transfer of funds from

the school to the society.

85. It cannot be denied and it is not denied that the only activity carried on by the society is the running of the Green Field School at Safdarjung Enclave. We have been provided with copies of the balance-sheets of the society. That shows for years ending on 31-3-1980 to 31-3-1984 and 31-3-1986 to 31-3-1990 the society had not incurred any expenditure. The income of the society consists of:-

- (i) term fees received;
- (ii) donations; and
- (iii) interest from bank.

86. What exactly are the donations, we have not been explained. The following extracts from the Income and Expenditure Accounts furnish us the following details:

"Year Ending Excess of Income over expenditure *Term Fees/ Contributions received from the school **Donation

31-3-80	49,865	3,31,189	76,230
31-3-81	79,564	3,25,725	87,27(sic)
31-3-82	1,06,698	2,78,650	1,00,246
31-3-83	1,23,032	2,43,398	1,15,301
31-3-84	2,21,561	57,109	2,17,020
31-3-86	5,35,973	3,32,662	1,87,580
31-3-87	6,73,645	4,81,200	1,76,778
31-3-88	13,91,743	7,16,700	5,30,547
31-3-89	10,31,228	7,59,820	2,53,230
31-3-90	9,91,487	6,30,725	5,06,255

* The receipts are from the School which are collected from the students thrice a year and are called 'Term Fee'.

** Sources not explained. It appears that these are the collections made from the parents of the students at the time of admission."

87. When we turn to the extracts from the income and expenditure accounts of Green Field School, we find from the tabulated statement furnished to us for the year ending 31-3-77 to 31-3-87 contributions have been made every year to the society. It has already been seen that the Delhi

School Education Rules nowhere contemplate transfer of funds from the school to the society. Certainly, such contributions cannot amount to voluntary contributions. The transfer of funds are in disregard of the rules and run counter to Rule 177 quoted above. We cannot, by any process of reasoning, hold that these are voluntary contributions received by the society. The Delhi School Education Act does not create the school entity a specific juristic entity different from the society. Where under Rule 59(2)(q) of the Rules it is provided that the managing committee shall be subject to the control and supervision of the society by which the school is run, it means that school is a part and parcel of the society. Where, therefore, the funds are transferred, even calling the contributions from the school to the society, would be nothing more than transfer of oneself. In fact, we do not find under the Delhi School Education Act any provision by which the school is made a separate juristic entity.

88. There is another way of looking at the matter. The school being a separate entity, premises occupied by the school will belong to it and not to the society. Therefore, the society cannot claim to be in exclusive occupation and use of the land and building in question. In fact, the proposal for assessment sets out these aspects clearly which are extracted below:

"The first step would be to determine whether the activity in which the society is engaged is charitable or not. The charitable purpose has not been defined in the Act, but it definitely means to include only such acts as relief of the poor, medical relief to the poor and education relief. In P. C. Rajaratnam Institutions v. MCD (Civil Writ Petition No. 1764 of 1979) Division Bench of the Delhi High Court has held that to be held as charitable institutions for the purpose of S. 115(4), the society must give education relief. It was further held by the Hon'ble Court that where fees are charged, exemption cannot be granted. The scrutiny of the Income and Expenditure account of the school shows that the activity which is being carried out by the society i.e. running of school, generates positive income from year to year. Positive income in the years 1977 to 1987 ranged between 32,000/- to Rs. 3 lacs per year. I do not know on what criteria this activity can be called as charitable activity. The institute is being run purely on commercial lines for the purposes of profits. Even the society for which receipts and payments accounts have not been filed are in receipt of income generated from this activity in the form of building fund and donations etc. which are forced on the students and their guardians.

The figures picked up from some of the final accounts of the society show that contributions from the school to the society was Rs. 1,56,895/- in the year ending 31-3-79, and every year thereafter the amount of contribution from school to the society has been increasing. Since the institute is not only self-supporting but also is generating positive income, I hold that the activity carried out by the society is not a charitable activity. The second confusion that the institute/society should be supported wholly or in part by voluntary contribution is also not fulfilled. The element of voluntary contributions comes only if there is an excess of expenditure over the receipts of the society. Even otherwise the donations received by the society if any cannot be treated as voluntary in view of the fact that they are all forced on the students/parents. The very fact that the tax payer society has claimed depreciation in the income and expenditure account of the school shows that what they are preparing is not the income and expenditure account, but a Profit and Loss Account as is done in commercial establishments. Depreciation is not an expenditure but is only a deduction @ certain percentage of the capital assets for arriving at profits and gains

of the business. In view of the foregoing discussions I have no hesitation to decline exemption from payment of general tax in respect of the property known as Green Field School, A-2 Block, S.J.D.A., New Delhi. Accordingly, all property taxes are payable by the tax payer."

89. The High Court correctly appreciated the law and held as under in C.W.P. No, 263 of 1989 reported in AIR 1989 Delhi 266 (para 5):

"At our instance, Mr. Bhasin brought on record the balance sheets of the school for the years 1981 to 1987-88 and that of the society for the years from 1978-79 to 1984-85. It was stated that balance sheets of the petitioner society for subsequent years were not ready. If reference is made to the income and expenditure account of the school for the year ending 31-3-1988 it would be seen that the school has collected Rs. 25,35,900.66 as fees and has given a contribution of Rupees 17,148.60 to the petitioner society. Again, if reference is made to the balance sheet for the year ending 31-3-1985 of the school, the school has collected over Rs. 14.5 lakhs as fees and contributed to the petitioner society Rs. 1,00,724.13. The amount is reflected in the balance sheet of the petitioner society as having been received from the school. Contribution of the school for the year ending 31-3-1984 to the petitioner society is Rupees 1,06,459.50. As on 31-3-1983, the amount of contribution from the school to the petitioner society is Rupees 2,43,398.91. It is not therefore, that there is any contribution being made by the society for running of the school. Rather the school is contributing various amounts to the petitioner society."

"Merely because the petitioner society is not distributing profits or is applying the profits earned from running of the school on construction of school building is not enough for it to claim exemption. It has to be shown that the petitioner society is supported wholly or in part by voluntary contributions. The learned Deputy Assessor and Collector has given weighty reasons to come to the conclusion that there were no voluntary contributions to the petitioner society and also to show that the case of the petitioner society was not covered by S. 115(4) of the Act. As has been noted above, in the present case it is the school which is generating income for the petitioner society and no amount whatsoever is being spent by the petitioner society on the school. The learned Deputy Assessor and Collector has further observed that the petitioner society is being run purely on commercial lines for the purpose of profits and it is in receipt of income generated from this activity in the form of building fund and donations etc., which are forced on the students and their guardians. Thus, there is no voluntary contribution."

90. We are in entire agreement with these findings.

91. The last question is whether any trade or business is carried on within the meaning of sub-sec. (5). S. 115(6) of the Act covers those cases where a part of the land or building is used for trade or business or for getting rental income therefrom. That part undoubtedly will be subject to tax. Suppose, there is another portion of the same lands or buildings where trade or business is carried on and profits are made and are applied to charitable purposes then that portion shall, for purposes of municipal taxation, be deemed to be a separate property. In other words, this part of the lands or buildings will qualify for relief. But the other part will be subject to tax. This is the idea of making a part of the lands or buildings a separate property so that the entire building does not get the

exemption. The trade portion is subjected to tax, and the charity portion is not subjected to tax.

92. Trade or business can be present in both sub-secs. (4) and (5) of S. 115. But, if the profits or income of trade or business is devoted to a charitable purpose and no part thereof is distributed among the members as dividends or bonus, then that trade or business is a means to an end. It is charity.

93. But, if there is a trade or business carried on in a land or building and its profits are not applied to a charitable purpose, sub-sec. (6) says that that part of the land or building where a trade or business is carried on or from which rent is derived will be subject to tax.

94. Applying the above propositions, it would only, at best, make the society running the school a charitable purpose, beyond that it does not strengthen its case as it fails to answer the test that it is supported wholly or in part by voluntary contributions.

95. We are unable to read down the proviso to utilisation of income and non-payment of dividends to the members as submitted by Mr. B. B. Pai.

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96. Mr. B. Sen, learned counsel for the appellant does not dispute before us that the Children Book Trust qualifies in every respect for exemption. He only objected to that part of the finding wherein the High Court had held as follows:

"The next contention of Mr. Arun Kumar was that the respondent was not supported mainly by voluntary contributions and was as such not entitled to the exemption. This contention of the appellant is answered by the provision to the said sub-section which clearly provides that the society may be supported wholly or in part by voluntary contributions . Because of the use of the words 'in part' in the proviso the society would be entitled to claim exemption, provided other conditions are satisfied, if it is able to show that it has received even a small amount of voluntary contribution."

97. But this finding cannot be correct in view of our foregoing discussion.

98. In, the result, we dismiss both the appeals. However, there shall be no orders as to costs.

Appeals dismissed.

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