

SUPREME COURT OF INDIA

Sh Medical Centre Hospital

Vs.

State of Kerala

C.A.No.665 of 2014

(Sudhansu Jyoti Mukhopadhaya and V.Gopala Gowda JJ.)

16.01.2014

JUDGMENT

V.GOPALA GOWDA, J.

1. Leave granted.

2. The present appeal arises out of the judgment and order dated 13th March, 2009 passed by the High Court of Kerala at Ernakulam in W.A. No. 362 of 2007 whereby the High Court dismissed the writ appeal of the appellant holding that the appellant-hospital is not entitled to building tax exemption relying on the judgment of the Kerala High Court in Medical Trust Hospital v. State of Kerala[1]. The appellant had filed writ petition No.605 of 2007 before the High Court of Kerala which dismissed the same by order dated 23.01.2007 on the ground that the building of the appellant is not used principally for charitable purposes, pursuant to which the above said writ appeal was filed which was also dismissed. Hence, this appeal.

3. The facts of the case in brief are stated hereunder: SH Medical Centre is a charitable institution registered under the Travancore Cochin Literary, Scientific and Charitable Societies Registration Act, 1955. This institution manages the appellant hospital which is managed by nuns of the Christian religious faith who have renounced their worldly existence to serve humanity to render charitable services like free treatment to patients belonging to the lower strata of the society and charges nominal amount for treatment from those who can afford such treatment.

4. The Memorandum of the SH Medical Center states that the object of the institution is purely philanthropic purposes and not profit. It states that the members of the society are not entitled to any share in the net proceeds of the society and in case the society is wound up the assets of the society shall not go to any of the members and shall go to any other charitable trust, society or institution with similar objects or to the Government.

5. The appellant started constructing buildings to house the hospital. Several buildings were constructed from 1987-1988 to 2002-2003 for the functioning of the hospital. On 16.10.1995 the respondent passed an order exempting the appellant from assessment of building tax. The said exemption was in connection with the main building of the hospital.

6. On 16.07.2003, the then Tehsildar, Kottayam called the representatives of the appellant to ascertain as to whether exemption is available to the appellant under the Kerala Building Tax Act, 1975 (hereinafter referred to as "the Act"). A person from the office of the Tehsildar, Kottayam visited the appellant hospital and stated that the appellant is liable to pay building tax.

7. Thereafter, the appellant filed a detailed representation stating that since it is a charitable institution engaged in charitable activities, the appellant has to be exempted from paying building tax.

8. On 27.02.2004, the appellant received a demand notice purportedly issued by the Assessing Authority by which the appellant was assessed to building tax under Sections 9(2) and 9(4) of the Act wherein building tax was assessed at an amount of [pic]24,77,700/- for a plinth area of 14826.63 Sq. meters to be paid by the appellant.

9. Aggrieved by the aforesaid orders dated 27.02.2004, the appellant filed Writ Petition(C)No. 9968 of 2004 before the High Court of Kerala.

By an order dated 02.04.2004, the learned single Judge of the High Court disposed of the writ petition directing the Tehsildar to reconsider the assessment in the light of the judgments of the High Court but rejected the request of the appellant to refer the issue relating to exemption to the Government under Section 3(2) of the Act. Against this rejection order the appellant filed a Writ Appeal No. 875 of 2004 before the High Court. The

Division Bench of the High Court disposed of the writ appeal with a direction to the Tehsildar, Kottayam to refer the matter to the Government for deciding as to whether the building is entitled to get exemption from payment of building tax under Section 3(1) (b) of the Act.

10. By an order dated 01.11.2006, the Government of Kerala rejected the contention of the appellant that they are entitled to exemption under the Act as free medical service is given only in the plinth area of 448.40 Sq. mtrs. in the third floor of the main building and therefore only the said portion is exempt from paying building tax.

11. Aggrieved by the aforesaid order, the appellant filed a Writ Petition (C) No. 605 of 2007 before the High Court praying to quash the orders dated 01.11.2006 and 27.02.2004 and to declare the appellant to be a charitable institution under the Act. In the petition the appellant had annexed the audited income and expenditure account of the hospital as well as balance sheet for the years 2002 to 2005.

12. The learned single Judge of the High Court dismissed the writ petition on the ground that the building of the appellant is not used principally for charitable purposes. To arrive at the said conclusion the learned single Judge took into account the gross income of the appellant and compared the gross income vis-a-vis the amount spent on free medical aid and social work. Aggrieved by the aforesaid order the appellant filed a Writ Appeal No. 362 of 2007 before the Division Bench of the High Court. By an order dated 13.03.2009, the Division Bench of the High Court dismissed the writ appeal by relying on two Division Bench decisions of the High Court in (1) Medical Trust Hospital (supra) and (2) Thirurangadi Muslim Orphanage Committee v. The Government of Kerala [W.P. (C) No. 4426 of 2009(B)] and held that as long as the appellant is a hospital run on chargeable basis it is not entitled to exemption.

13. Both the single Judge as well as the Division Bench of the High Court interpreted the 'Explanation' Clause of Section 3(1) of the Act to hold that the buildings were not used principally for a charitable purpose as the medical services were not rendered free of charge to all patients, but only to those who could not afford it. The rest were charged a nominal fee for services at the Hospital. The explanation to Section 3 of the Act reads as under :

“For the purposes of this sub-section, “charitable purpose” includes relief of the poor and free medical aid.”

The High Court, mainly relying on the Medical Trust case (supra) has held that since it has already been held by the Kerala High Court that charitable purpose means rendering medical relief 'free of charge' as per the Explanation clause to Section 3(1)(a) of the Act, the appellant was not entitled to exemption from paying building tax as they were charging nominal charges from patients who could afford it and was giving free services to those who could not.

14. The matter is in appeal before us. The learned counsel for the appellant, Mr.Senthil Jagadeeshan has contended that the Division Bench has erred in relying upon the judgments in the Medical Trust case and the Thirurangadi Muslim Orphanage Committee case (supra) as the said judgments were rendered in the facts of those cases and no proposition of law has been laid down in the said decisions that if a hospital is run on chargeable basis it is not entitled to exemption. Further, it was contended that in the case of State of Kerala v. Gregorious Medical Mission[2], it was held that the fact that some amount is collected from the patients will not be sufficient reason to hold that the building can be excluded from the beneficial provisions contained in Section 3 of the Act if the hospital is intended for the relief of the sick without any motive for making profit. It was submitted that a perusal of the Memorandum of Association as well as the Rules and Regulations of the appellant hospital clearly shows that it has been set up solely for philanthropic purposes without any profit motive, and it also clearly states that in case the society running the hospital is wound up, the assets of the hospital shall go to any other charitable society having similar objects or to the Government. The counsel for the appellant has urged before us to consider that for any hospital to be able to provide free medical relief to poor patients, some income would have to be generated and it would otherwise be virtually impossible for any hospital to undertake free medical service. The counsel then went on to refer to the Income and Expenditure Account of the appellant hospital which shows that for the years 2002-03,2003-04 and 2004-05, the appellant has spent [pic]75.12 lakhs, [pic]78.39 lakhs and [pic]88.33 lakhs respectively for providing free medical services and for charity. For the said years, the net income of the appellant hospital has been [pic]4.2 lakhs, [pic]5.37 lakhs and [pic]8.33 lakhs respectively and it was submitted that the High Court ought to have compared the amount spent for free medical services vis-a-vis net income and not gross income which was what was done to hold that the buildings were not 'used principally' for the charitable purpose as required under Section 3(1)(b) of the Act. By doing this, it was contended that the various expenses for running the hospital were ignored.

15. The respondents, on the other hand, through learned senior counsel, Mr. Jogy Scaria, have contended that the appellant is not entitled for exemption from paying building tax as the hospital is making profit and hence cannot be considered a charitable institution. It was submitted that from the perusal of the accounts of the hospital, it is evident that the hospital authorities are not rendering any medical service free of cost and are making profit and is not running under 'no loss no profit' basis as claimed. The purpose for which the building is used is the only relevant fact for determining whether the appellant is exempt from paying building tax and simply because the income derived from it is used for charitable purpose, it cannot be exempted from paying building tax. The counsel for the respondents relied on the Medical Trust case (supra) in order to show that charitable purpose means free medical relief as held in that case, and since the appellant is not providing free medical relief for all and is instead charging a nominal fee for those who can afford it, it cannot claim exemption from building tax.

16. We have heard the learned counsel for both the parties and perused the evidence on record and examined the rival legal and factual contentions. The following questions would arise for consideration :

i. Whether the application of income derived from a building for charitable purpose is sufficient to hold that a building is used 'principally' for 'charitable purpose' as per Section 3(1)(b) of the Act in order to hold it exempt from paying building tax?

ii. Whether the Kerala High Court has correctly interpreted the 'Explanation' clause to Section 3(1) in the cases referred (supra) to hold that charitable purpose means solely 'relief of the poor and free medical relief'?

iii. What order?

17. Answer to Question Nos. i & ii:

In our considered view, the High Court was correct in holding that the application of income derived from a building for charitable purposes does not amount to the building being 'principally used' for charitable purpose. In the present case, if we have to rule against the High Court's judgment, it will be necessary to have more evidence with respect to details such as what the nominal charges are for patients who can afford it and the number of patients

offered free medical care vis-a-vis the number of patients who pay for the services. The argument that the income is applied for charitable purposes can be accepted only if it is known what portion of the income goes into charity i.e. free medical services. Does the percentage of patients receiving free medical services increase every year? If we hold that the income derived from a building is applied for charitable purposes then that has to be clearly proved, and the fact that the institution is set up for charitable purposes as stated in its Memorandum of Association cannot be enough to hold that income is necessarily applied for charitable purposes, especially in the light of the fact that the patients who can afford to pay for it are being charged for medical services.

18. Now we will examine the question of what 'charitable purpose' means. The Oxford English Dictionary defines 'charitable' as "of or relating to the assistance of those in need". In the present case, it can be argued that all medical services relate to the assistance of those in need. This is a valid interpretation but cannot be accepted for the purposes of tax. If these medical services in the present case were being offered free to a majority of the patients rather than a minority of patients, then the conclusion could have been reached that the buildings are principally used for charitable purposes. Further, an amount of approximately [pic]28,00,000/- of the expenses are towards 'social work and charities' as per the income and Expenditure Accounts provided, whereas 'free medical aid' is around [pic]60,00,000/- for the years 2004-05. It is not clearly mentioned what 'social work and charities' is. Furthermore, an exemption is provided for that area in which free medical aid is provided by the appellant-hospital. The appellant has not produced cogent material evidence before the competent authority or the State government or before the High Court to show that the entire building has been used for charitable purpose by rendering free medical aid to the needy, poor people of society. The fact is that the details furnished in the documents produced would go to show that the appellant hospital is earning money by charging from patients and therefore the claim of the appellant that the entire area taxed is used for charitable purpose is not reflected in the documents produced. Hence, we are not inclined to interfere with the impugned orders. The High Court has correctly interpreted the 'Explanation' clause to Section 3(1) of the Act to hold that 'charitable purpose' means 'relief of the poor and free medical relief'.

19. The tax herein is on the 'building'. The society already has income tax exemption and the question here is whether the building is used principally for 'charitable purpose'. Only the building utilized for providing free medical aid can

be said to be used principally for charitable purpose and it will go against the letter of the law to grant building tax exemption for all the buildings of the hospital irrespective of what it is used for simply on the ground that the overall object of the hospital is charity although it is being predominantly run on a chargeable basis. In this case, the building used for providing free medical aid must be exempted from paying building tax.

20. In view of the foregoing, we uphold the judgment of the High Court and dismiss the appeal of the appellant-hospital, but without costs. The order dated 16.7.2009 of this Court granting stay shall stand vacated.

[1] 2004 (2) KLT 139

[2] (1992) 1 KLT 230