ANDHRA PRADESH HIGH COURT

Governing Body of Rangaraya

Vs

Income-Tax Officer

(C Reddy and Jeevan Reddy, JJ.)

08.12.1975

JUDGMENT

Jeevan Reddy, J.

1. This writ petition is filed by the governing body of Rangaraya Medical College represented by its secretary and principal, Mr. D. Sundarasiva Rao, for issuance of a writ of certiorari or any other appropriate writ, order or direction quashing the assessment order dated March 30, 1974, passed by the respondent, ITO, A-Ward, Circle I, Kaki-nada. Under the said order pertaining to the assessment year 1973-74, the ITO treated the petitioner, a society registered under the Societies Registration Act, as an association, of persons, overruling its claim of being exempt from taxation by virtue of Clause (22) of Section 10 of the Act. It was held that the petitioner-society is founded on April 16, 1964, to manage the Rangaraya Medical College which was started by another society, namely, the Medical Education Society, Kakinada, six years earlier and that the college and the managing society are two different entities. It was further pointed out that there is no registered document transferring the buildings to the petitioner-society, that a compulsory contribution of Rs. 12,000 per seat is being collected by the society and that the bank accounts and deposits are maintained in the name of the society itself and not in the name of the college. It was further held that the petitioner-society is collecting Rs. 12,000 per seat and Rs. 300 as registration charges and that the said amount represents the sale price of a medical seat in the college and that this is a regular business transaction under the law of contract and the income by sale of seats is taxable. Further, the mere fact that the deposit made by the applicant for admission is subsequently treated as donation on admission being granted to him, does not in any manner affect this position. He, therefore, held that the claim of the petitioner, if at all, has to be examined only under Section 11 of the Act. It was then held that the memorandum of association of the petitioner-society does not authorise the construction of any buildings and that the construction of staff quarters is not necessary for managing and running the medical college nor such construction is mandatory upon the society and, therefore, the petitioner's claim in that behalf was also negatived. The ITO distinguished the English case in *Ereaut (H.M. Inspector of Taxes) v. Girls' Public Day School Trust Ltd.*[1] cited before him, and made the assessment, also

charging interest under both Sections 139 and 217 of the Act. Penalty proceedings were also separately initiated under Sections 271(1)(a) and 273(b).

2. Mr. T. Ramachandra Rao, the learned counsel for the petitioner, contends that the impugned order is without jurisdiction and that the mere fact that the petitioner-society filed an appeal against the impugned order or that a stay was granted under certain conditions is no bar to this court to issue a writ of certiorari. He submitted that the petitioner is an educational institution existing solely for educational purposes and not for earning any profit and that any surplus arising from its operations is used exclusively for the purposes of the said educational institution only and that it is not a case where the profit accruing from its operations is being distributed among the members of the society or the members of the governing body. He relied upon the decision in Mayor &c. of Manchester v. McAdam [1896] 3 TC 491 (HL) in support of his proposition. On behalf of the revenue, however, it is contended that the impugned order is valid and in accordance with law and that the petitioner is not exempt from taxation under Section 10(22) of the Act and, further, that in any event the petitioner having an alternative remedy, and also having chosen to avail of that alternative remedy, cannot seek the remedy by way of certiorari.

3. Clause (22) of Section 10 of the Act, in so far as it is relevant, may be set out:
Section 10 :

> "In computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included--......
> (22) any income of a university or other educational institution, existing solely for educational purposes and not for purposes of profit."

4. The twin questions that arise for consideration are whether the petitioner is an educational institution and whether it is existing solely for educational purposes and not for purposes of profit.

5. A copy of the memorandum of association and rules and bye-laws of the petitioner has been placed before us. The objects of the governing body are to manage the said college and its ancillary institutions, to take over engagements entered into and assets and properties, movable and immovable, acquired for the said college and the funds raised by the Medical Education Society, Kakinada, for the said college, to encourage research and study in the concerned faculties in the college, to institute additional courses and post-graduate courses, to organise and maintain hospitals, clinics, laboratories, etc., for clinical teaching and research and training of the students and generally to do all other things as may be necessary, incidental or auxiliary for a proper management of the said college and to establish institutions ancillary to the college. The management of the college and its ancillary institutions and their assets, properties and funds were entrusted to the petitioner.

6. With respect to the objection of the ITO that there is no registered document transferring the immovable properties of the college in favour of the petitioner-society, it is submitted by the petitioner that since the said transfer involves a huge amount of charges towards stamp and registration, they have applied to the Government for exemption in that behalf and that the same is pending consideration with the Government It is further explained that since the said transfer is not complete in accordance with law, the construction of the buildings has to be undertaken in the name of the said society from out of the contribution amount set apart by the petitioner-society.

7. Now, it is not in dispute that the college is being managed and run by the petitioner-society itself and that the Medical Education Society, Kaki-nada, is having no concern with any of the affairs of the college including the admission of students and appointment of teachers and other employees or any other matter. Only because of the above difficulty in effecting a conveyance, the constructions are being done in the name of the former society. In the above circumstances, we are not able to appreciate the reasoning of the ITO that the petitioner-society is different from the college and that there are two societies running the college and, for that reason, the petitioner-society is not an "educational institution". There is no distinction between the petitioner and the college as a fact.

8. We may now consider the meaning of the expression "educational institution ". In England the "educational institutions" are exempt from taxation if it is shown that the objects of the institution are charitable. It has been held that promotion of education by establishing and maintaining schools and colleges is charitable. It has been further held :

> "Analogous to colleges and schools are institutions, the object of which is the diffusion of knowledge of a particular type, as the Zoological Society, the Geographical Society, the Royal Literary Society, the Royal Society and the Royal Choral Society. Institutions the objects of which are the promotion and encouragement of the study and practice of various arts and branches of science, as for example surgery and civil engineering, are established for charitable purposes under this head of advancement of education ...... provided that they do not also have the object of promoting the interests of individuals. The fact that individual members of the institution may derive incidental benefit from their membership in practising their professions does not prevent the institution being a charity."

9. It has been further held that:
"In considering whether or not trusts for the education of particular classes of persons are for charitable purposes the question of the presence of a sufficiently public character to the trust is of importance." (See Simon's Taxes, Vol. 6, para 507).

10. This question had squarely arisen in the case reported in Ereaut (*H. M. Inspector of Taxes) v.*

Girls' Public Day School Trust Ltd[2].

11. The question that arose in the said case was whether the Wimbledon High School for Girls founded by a limited company and being managed at the relevant time by a public trust was a "public school" within the meaning of Rule 1(c)of No. VI of Schedule A of the Income Tax Act, 1918. The expression "public school" was not denned in the Act, but several characteristics of a public school were referred to in certain earlier decisions, the main characteristic being that it should not be run primarily for private profit. It was repeatedly emphasised that no hard and fast definition can be laid down and that the character of the school, public or private, must depend upon the terms on which and the circumstances in which the education is imparted. Merely because some pecuniary benefit arose to the members of the school in the running of the institution, it was held not to be sufficient by itself to exclude the school from the category of "public school". In that particular case, the facts found were that the school was originally founded by a limited company, the capital of which was divided into 40,000 preference shares and 100 new shares. While the preference shareholders were entitled to a dividend of 4% per annum free of income-tax, the new shareholders were not entitled to any dividend. However, the school was managed by a governing body consisting of 24 persons of whom 1/3rd were nominated by the local education authority and the remaining were appointed by the council of trust to which the said school was handed over. The governing body was entitled to charge fees from the students and was largely maintained by public monies granted by the Board of Education, which grants were to be denied by law to a school conducted for private profit. It was recognised by the local education authority as providing public school education for the residents of a particular locality and that the council of the trust consisted of persons elected on account of their qualifications to administer education and "that their sole object is to maintain the schools of the trust at the highest level of efficiency". The Court of Appeal held that the school is not a public school since some of the persons concerned in its foundation and maintenance were entitled to personal pecuniary benefit out of the profits earned by the school. However, the House of Lords reversed the decision and held that while a school conducted by an individual for his own emoluments would clearly not be a public school, it does not follow that wherever there is a possibility of any profit arising to an individual in the course of carrying on of a school, that fact by itself would necessarily prevent the school from having the character of a public school.

12. Applying the said tests, we are satisfied that the petitioner-society, whose sole object is managing and maintaining the said medical institution, can be held to be an educational institution without any motive of private or personal profit. In this connection, it is relevant to note that the ITO has not recorded any finding, nor is it suggested in the counter-affidavit, that any surplus arising from the operations of the institution is distributed by way of profit to any individuals. Merely because certain surplus arises from its operations, it cannot be held that the institution is being run for the purpose of profit so long as no person or individual is entitled to any portion of the said profit and the said profit is used for the purposes and for the promotion of the objects of the institution. The decision reported in Mayor &c. of Manchester v. McAdam

[1896] 3 TC 491 (HL) was a case where an exemption from income-tax was claimed in respect of the buildings owned by the municipal borough of Manchester on the ground that the said buildings were being used as public libraries. Under the Income Tax Act, exemption was available in respect of the property of any literary or scientific institution used solely for the purposes of such institution and in which no payment is made or demanded for any instruction afforded there by lectures or otherwise. It was held by a majority of the House of Lords that undoubtedly a public free library is a literary institution, its object being the spread of knowledge and love of literature among the people. The difficulty was, however, experienced because the law further required that such a building must be "the property" of a literary institution. The courts below took the view that for satisfying the requirements of law, one must first ascertain who is the owner of the building in respect of which the exemption is claimed and that only if the owner of the building can be called a literary institution, exemption is available to the building and not otherwise. Such a strict construction, however, was not approved by the House of Lords and it was held that (p. 495):

> "......even though the Corporation of Manchester in whom the buildings, the taxation of which is now in question, are vested, cannot be said to be itself a literary institution, nevertheless, the buildings being appropriated, for the purposes of free public libraries, being devoted exclusively to that use, and incapable of being legally applied to any other purpose, may properly be said to be the property of a literary institution."

13. A similar liberal meaning was attached to the property owned by a religious and charitable institution, namely, Dayalbagh Satsang Sabha, by the Allahabad High Court in its decision reported in CIT v. Radhaswami Satsang Sabha [1954] 25 ITR 472. We are, therefore, of the opinion that merely because the immovable properties, namely, the buildings and the lands of the college, have not so far been formally vested in the petitioner-society, it would not in any manner deprive it of the character of an educational institution existing solely for educational purposes.

14. The writ petition is, therefore, allowed with costs, Advocate's fee Rs. 100.

Cases Referred.

1[1930] 15 TC 529 (HL)

2[1930] 15 TC 529 (HL)