BOMBAY HIGH COURT

Trustees of Gordhandas Govindram Family Charity Trust

Vs.

Commissioner of Income Tax

Income-tax Ref. No. 17 of 1951

(Chagla, C.J. and Tendolkar, J.)

04.09.1951

JUDGMENT

Chagla, C.J.

1. The following questions of law were referred to the High Court :

> "Whether on a true construction of the indenture of trust, dated June 11, 1941, the income from Gordhandas Govindram Family Charity Trust is held under trust wholly for charitable purposes and is exempt under S. (3) (i) of the Act?

Whether on a true construction of the trust deed any part of the property was held in trust for charitable purposes and income arising therefrom is exempt under Section 4 (3) (i) of the Act?"

Chagla, C.J.

This reference raises the question whether a certain indenture of trust settles property wholly for charitable purposes and whether income derived by the trustees is exempt from payment of tax under Section 4 (3) (i) of the Act. The trust we are concerned with was executed on June 11, 1941, and significantly enough it is described as "Gordhandas Govindram Family Charity Trust". Clause 2 of the trust deed provides for the application of the balance of the income (after payment of all necessary outgoings) in giving help or relief to such poor Vaishya Hindoos or other Hindoos as the trustees may consider deserving of help in the manner and to the extent specified in the said trust deed and subject to the conditions and directions stated in the next following clauses and/or for the charitable object or objects thereinafter mentioned. Therefore, the relief to poor Vaishyas or other Hindoos is qualified by the conditions which are prescribed in the subsequent clauses. Sub-clause (a) of clause 3 provides that poor Vaishya Hindoos who are members of Seksaria family shall be preferred to poor Vaishyas not belonging to the said family

and poor Vaishyas of Navalgadh shall be preferred to poor Vaishya Hindoos of any other place in or outside India. Sub-clause (b) provides for maintenance that is to be paid to any poor male descendant of the settlor. sub-Clause (c) provides for the maintenance of any unmarried female descendant of the settlor. Sub-clause (d) provides for payment of marriage expenses to any poor male descendant of the settlor. Sub-clause (e) provides for the marriage expenses of any poor female descendant of the settlor. The sub-clauses that follow thereafter provide for payment of money to the poor male or female descendants of the other members of the Seksaria family. Having exhausted all the members of the family, both for the purposes of maintenance and for marriage expenses, sub-Clause (r) provides for the payment of Rs. 5 per month as and by way of maintenance to any poor male Vaishya Hindoo who may be deserving of help, and sub-Clause (s) provides for a similar payment to be made to any female Vaishya Hindoo for maintenance who may be deserving of help. Then sub-Clause (t) provides for payment of Rs. 500 as marriage expenses of any poor male Vaishya Hindoo who may be deserving of help and sub-Clause (u) provides for the payment of Rs. 500 as marriage expenses of any poor female Vaishya Hindoo who may be deserving of help. Clause 4 of the trust deed provides for the disposal of the surplus of the income, and the provision is that the trustees may apply the balance or surplus in their absolute discretion for giving monetary help or relief to poor members of the Hindoo community in such way as they consider most advantageous to the objects of such charity, and liberty is given to the trustees to hand over the unpaid balance or such part of it to the trustees of "Gordhandas Govindram Charity Trust" which was another trust created by the settlor on March 25, 1941. These are the material provisions of the trust deed and the question that arises is whether within the meaning of the Income-tax Act the property under this trust is held wholly for religious or charitable purposes.

2. Now, "charitable purpose" is defined, and the definition is that it includes relief of the poor, education, medical relief and advancement of any other object of general public utility. Therefore, it is clear, apart from authorities, that in India relief of the poor by itself would not be a charitable object unless it involved an object of general public utility. To further analyse this proposition it must result in any charity which was intended for the relief of the poor relatives of the settlor or donor not being a charity that falls within the definition of the Act. It is impossible to contend that relief of poverty when that relief is restricted to members of one's family can be a charitable object which is of general public utility. It may be that if the intention was clearly to benefit the public generally and incidentally or indirectly the members of the family of the settlor were also benefited, then a view may be taken that the settlement was for a charitable purpose; but when you have a case in which the primary purpose of the settlor is to benefit the members of his family and remotely and indirectly to benefit the general public, then it cannot be stated that the settlement is for a charitable purpose within the meaning of the Income-tax Act.

3. Now turning to the trust deed itself it seems to me clear that the primary object of the trust was to benefit the poor members of the family of the settlor. It is true that in clause 2 it is provided that the income should be applied in giving help or relief to the poor Vaishya Hindoos or other

Hindoos, but this provision is, as I observed before, made subject to the conditions and directions which follow in the subsequent clauses, and the subsequent clauses make it perfectly clear that the members of the family of the settlor were to be the first objects of charity, both in respect of maintenance and also for marriage expenses. It is only after all the members of the family were exhausted that a section of the public, the Vaishyas or other Hindoos, would come in for benefit under the trust. It is not even, as Sir Jamshedji contended, a preference given to the members of the settlor's family. As I understand "preference" it means that all other things being equal you prefer a person who satisfies certain other qualifications. But the object of this trust is not for preferring members of the settlor's family if the conditions were alike when compared to the poor members of the Hindoo community. The whole intent and object is that the trust should constitute a first charge in favour of the poor members of the settlor's family. It is only when that first charge is satisfied that the members of the public may come in for any benefit under the trust. In my opinion the benefit which is reserved for the public under the trust deed is much too remote and much too illusory for being held that this is a trust which has its object, "general public utility".

4. Now, turning to the authorities, reliance has been placed on certain English decisions. In considering English decisions one important fact must be borne in mind. In England a trust for relieving poverty of relatives of a settlor is a good charitable trust even if no member of the public was to benefit under such a trust. Relief of poverty by itself is a recognised head of charity in England and in this head of charity no element of general public utility need enter at all; and even so, as I shall presently point out, the Judges in England have with the greatest reluctance upheld the law where that law permits poor relatives of a settlor to be the objects of a valid charity.

5. The first decision to which reference was made is the *'Attorney-General v. Duke of Northumberland'*[1], There the trust was for the maintenance of the poorest of the kindred of the settlor and the settlor desired that although the charity may be for the relief of the poor in general his kindred who were poor, sick, aged and impotent should derive the benefit in preference to other poor persons similarly placed. This decision is relied upon for the proposition that even where the kindred of the settlor were preferred the English Courts upheld the settlement as constituting a good charity. Now, in the judgment it is stated that the kindred of the settlor constituted a first charge upon the trust. I fail to see how this decision can help the assessees because when one remembers that in England even without giving a mere preference in favour of the poor relatives a charitable trust can be made in favour of the poor relatives 'simpliciter' and a charity may only consist of help being given to poor relatives. Therefore, the decision under consideration is merely a narrower application of that doctrine. If you can make a good charitable trust entirely in favour of the poor relatives for relief of their poverty 'a fortiori' you can certainly make a good charitable trust for relief of poverty of poor persons in general giving a first preference to your poor relatives.

6. Then there is rather a significant decision of the Court of Appeal in 'Compton', *In re : 'Powell v. Compton'*[2]. In that case it was held that a gift for the education of the descendants of named persons must be regarded as a family trust and not as one for the benefit of a section of the community and the Court of Appeal rejected the statement of law in Tudor on Charities as unsupported by authorities, viz., "bequests for the education of the donor's descendants and kinsmen at a school or college were valid"; and with considerable hesitation and reluctance they came to the conclusion that trusts in favor of poor relatives of the donor must be considered a valid charitable trust that being the law at that date. But they pointed out that the principles of law were anomalous and were not to be extended to apply to different class of cases. Therefore, to-day in England it is only in cases of poverty that a charitable trust may be restricted to members of one's family and with regard to other classes of charity English Courts have refused to extend that

[1](1877) 7 Ch D 745
[2](1945) 1 Ch 123

principle.

7. Turning next to the Indian cases there is the leading case of *'Arur v. Commissioner Of Income-Tax'*[3], There the trust was for awarding scholarships to the members of Arur family and there was a provision giving discretion to the trustees to give 50 per cent. of the surplus for the purpose of awarding scholarships to the deserving members of the settlor's family. This trust was held not a valid charitable trust inasmuch as it did not disclose any object of general public utility. This was the view taken by Stone, C.J. and Kania, J. (as he then was); but what Sir Jamshedji very strongly relied upon was an observation by Kania, J., at p. 793. This is what the learned Judge says :

> "In my opinion, therefore, to exempt the income from taxation, on the true construction of the settlement in question, the Court must find that the object of education was for a section of public at least. The settlement may claim exemption in that case, even though the members of the family may be given preference in the selection of scholars."

With respect this view of the learned Judge is at best an obiter and the learned Judge was not called upon on the facts of the case to express any opinion on the question which now directly arises for our determination in this reference. The learned Judge expressed this opinion after considering several English cases; but with respect he seems to have overlooked the vital and fundamental distinction as to what is charity in England and in India. It is difficult to see how if preference was given to members of one's family either for educational purposes or for relief of poverty it can possibly be contended that the object of general public utility, was satisfied. Even if this observation of the learned Judge was to be considered as correct, the "preference" that Kania, J., was thinking was not the preference which one finds in the trust deed under consideration. The preference that the learned Judge intended to give expression to was a preference under which members of the public would not be wholly excluded and wholly postponed till the members of the family were first provided for. Apart from this observation of

Kania, J., Sir Jamshedji has not been able to draw our attention to any authority which has taken this view. On the contrary the view of the most of the High Courts is that a settlement or a trust for the maintenance of poor relatives of the settlor is not a good charity in India.

8. I should like to say a word or two about the provision in the settlement with regard to giving of marriage expenses to the poor male and female relatives of the settlor. It is difficult to see how giving marriage expenses to specific individuals can ever be a charitable object whether it involves general public utility or not. When you relieve poverty you supply a person with the bare necessities of life. You give him what he cannot possibly do without. But, marriage is a luxury which need not be indulged in by everyone in this country and at least in the year 1951 of Grace it is not possible to say that a poor man cannot do without matrimony and that matrimony is a bare necessity of life and you must provide funds which may help him to get married. Sir Jamshedji has drawn our attention to the view which is held of the sacred character of marriage in this country. I do not wish to say anything which may be disparaging to that view, but we must construe "charitable object" as the object for the relief of poverty, and by no standard, either in India or in England, can it be said that giving money for the marriage of

[3] 47 Bom LR 786

individuals is by itself a charitable object. Reliance was placed on a decision of an English Court, *'In Re Cohen-National Provincial and Union Bank of England (Ltd.) v. Cohen[4]',* There the charity which was considered was the power given to the trustees to select a deserving Jewish girl and pay such selected girl on her marriage a certain amount as dowry and that charity was held good, amongst other grounds, on the ground that the settlor intended to encourage marriage amongst Jews and it was for the benefit of Jewish religion. Therefore, the view was taken (it is a judgment of a single Judge) that it may encourage marriage in a particular community, and therefore it must be for the benefit of the community. But even that view cannot apply to the trust deed before us because expenses are not given primarily for the benefit of any community or section of the community but marriage expenses are given for the benefit primarily of the members of the Seksaria family. Without meaning any disrespect to that family I do not think that it can be considered that an enlargement of that family is necessarily for general public utility or even for the benefit of a section of the public.

9. Under the circumstances I am of the opinion that the income from this trust is not held in trust wholly for charitable purposes and is, therefore, not exempt from taxation under Section 4 (3) (i) of the Act.

10. The second question put to us by the Tribunal does not really arise on the facts that they themselves have found. They have found as a fact in the statement of the case that no portion of the income of the trust was in fact specifically set apart for any charity or applied thereto. On that finding the second question which is raised on the second part of Section 4(3)(i) does not really arise.

11. Assessees to pay the costs of the reference.

Tendolkar, J.

12. I agree with the answers but I wish to add a few observations. Relating to the bequest in Clause 3, sub-cls. (d) and (e) for marriage expenses of poor male and female descendants of the settlor, as well as the provisions in subsequent clauses of that trust deed in relation to marriage expenses, what we have got to determine is whether this is an object of general public utility. It may be that marriage is an object of utility to the individuals concerned and it may also be that in certain given conditions of society it may be an object of general public utility to promote marriages generally such as for instance when the population of a country has gone down as a result of a great war. But in no conceivable instance can I think of an individual marriage being an object of public utility; and since this is the sole test to be applied for the purpose of determining whether there is a charitable purpose the cases decided in England holding that any trust for bringing about marriages of girls in the Jewish or other communities is charitable are no help in determining the particular point before us.

13. With regard to the rest of the trust, as the trust deed stands I read it as casting an obligation upon the trustees to make certain payments specified therein to poor descendants of the settlor's family whether or not such poor descendants are as deserving of help as other members of the Vaishya community. This, therefore, is not, in my

[4](1949) 36 T L R 16

opinion, a case of preference being given to the descendants of the settlor's family at all; but these descendants so long as they are poor - whatever their degree of poverty - exclude other members of the community even though they may be poorer than the poor descendants of the settlor's family. With respect to the observation of Kania, J. (as he then was) in the case of *'Arur v. Commissioner of Income-Tax[5]'.* to which reference has already been made by the learned Chief Justice, I do not agree that a settlement in which a preference is given to the poor kindred of the settlor is a settlement that may claim exemption; because if the law were such, then a settlor could, by giving preference to his kindred to such an extent that no benefit or relief to any member of the public is in substance left, nullify the effect of the decisions in India that a trust cannot be made for the benefit of the poor relatives alone so as to constitute it a valid public charitable trust. But even assuming that the observations of the learned Judge were right and such a settlement is entitled to claim tax exemption, on the provisions of the trust deed before us I am not inclined to hold that this is a case of preference at all; but that this is a case where the settlor desires that his descendants should have the benefit in the main, and if there was anything left over, then alone other members of the Vaishya Hindoo community should come in. I, therefore, entirely agree with the answers suggested by the learned Chief Justice to the questions referred to us.

Answer accordingly.

[5]47 Bom LR 786