

BOMBAY HIGH COURT

Commissioner of Wealth-Tax

Vs

Trustees of The J.P. Pardiwala

(V Desai , CJ.Y Tambe, J.

16.02.1965

JUDGMENT

Tambe, J.

1. This is a joint reference at the instance of the Commissioner of Wealth-tax under section 27(1) of the Wealth-tax Act. We are here concerned with the assessment year 1957-58 and 1958-59, and the question that has to be considered is whether the trust is for any public purposes of a charitable or religious nature, and, therefore, exempted from payment of wealth-tax.

2. Facts in brief are : The assessee before us are the trustees of a trust known as "Jehangir Pestonji Pardiwala Charity Trust". One Mr. J. P. Pardiwala by a deed dated 17th February, 1941, settled on trust certain properties mentioned therein. Clause 2 of the deed provided that "the trustees shall apply the income of the trust property for defraying the expenses of performing and carrying out the religious ceremonies, charitable, benevolent and other objects specified in the third schedule hereunder written or to such one or more of them in such manner and in such manner and in such proportions as to the said trustees may from time to time seem expedient and proper." It is not necessary to reproduce the entire third schedule, inasmuch as it is not in dispute that the first four out of the six objects mentioned in the third schedule are clearly for public purposes of a charitable nature. The dispute centers round the provisions contained in clauses 5 and 6 of the third schedule. The first clause in the third schedule provides for contributions to the support and relief of deaf, dumb and blind and indigent members of the Parsi or any other community. Clause 2 provides for the support and relief of persons of any race suffering from or rendered destitute on account of the famine, etc. Clause 3 relates to paying over or contributing to the support of persons of any race, free gifts or donations for the purposes of education, for the performance of navjot and marriage ceremonies of poor Parsis, etc. Clause 4 relates to paying over or contributing to or towards the support and maintenance of hospitals, dispensaries and other institutions of a similar character. Clauses 5 and 6 are in the following term :

"5. Paying over to Parsi Anjuman Agiary Fund or to the Parsee Panchayat or in their discretion to be retained by the trustees for performing or causing to be performed Baj Raojgar, Muktaad and other religious ceremonies for the repose of the soul of the deceased members of the family of Jehangir Pestonji Pardiwala and his wife and on their death of their own including funeral and death ceremonies.

6. Paying over or contributing to or towards the support and maintenance of all or any other lineal descendant of the children of Pestonji Pardiwala and or any or more of the relatives, wife, children and family of Jehangir Pestonji Pardiwala, his brother and sisters, and/or other indigent persons of whatsoever creed or nationality who in the opinion of the trustee or trustees may require support and aid such sums of money as the said trustee or trustees may in their absolute discretion think proper preference being given to the relations of Jehangir Pestonji Pardiwala and his wife."

3. The Wealth-tax Officer rejected the claim of the assessee for exemption. The statement of the case shows that the view taken by the Wealth-tax Officer was that it being open to the trustees to apply the income of the trust to any one of the objects mentioned in the deed of trust, and one of the objects, viz., to give relief to the poor descendants of the settlor, not being a public purpose, the trust was not for a public purpose of a religious or charitable nature. Mr. Joshi, learned counsel for the revenue, pointed out to us that the order of the Wealth-tax Officer does not show that the Wealth-tax Officer had taken the view that clause 6 provided for giving aid to the poor relations of the settlor. According to Mr. Joshi, the view taken by the Wealth-tax Officer was that the clause having enabled the trustees to aid or contribute towards the support and maintenance of the relations of the settlor whatsoever be their condition, was not a public purpose. From the copy of the order which has been marked as annexure "B" to the statement of the case, Mr. Joshi's contention that the Wealth-tax Officer has not found that the clause provided for giving relief to the poor descendants of the settor, appears to be correct. The appeals taken by the assessee to the Appellate Assistant Commissioner succeeded. Following the decision of the Supreme Court in Trustees of the Charity Fund v. Commissioner of Income-tax and of this court in Commissioner of Income-tax v. Trustees of Seth Meghji Mathuradas Charity Trust, the Appellate Assistant Commissioner allowed the appeals and set aside the order of the Wealth-tax Officer, holding that the assessee was entitled to exemption from the levy of wealth-tax. The department took further appeals to the Income-tax Appellate Tribunal. The appeals were, however, dismissed. On application made by the Commissioner, the Tribunal has drawn up the statement of the case and made this joint reference for the two assessment years referring to us the following question of law :

"Whether on the facts of the case the trust property is exempt from wealth-tax under

section 5(1)(i) of the Wealth-tax Act?"

4. Section 5 relates to items of property in respect of which no wealth-tax is payable by an assessee. The material part thereof read :

"5. (1) Wealth-tax shall not be payable by an assessee in respect of the following assets, and such assets shall not be included in the net wealth of the assessee -

(i) any property held by him under trust or other legal obligation for any public purpose of a charitable or religious nature in India."

5. It is not in dispute that the assessee is holding properties under a trust, under an obligation to apply the income of the said trust properties to the objects mentioned in the six clauses of the third schedule. It is also not in dispute that the first four clauses relate to public purposes of a charitable nature, and there can hardly be any doubt about it. The first clause provides for relief to the physically incapable persons like the deaf, dumb and blind persons. The second clause relates to grant of relief to the victims of natural calamity like famine, fire, flood, etc. The third clause relates to grant of aid to the poor for education and religious ceremonies. The fourth clause relates to making of contributions for the support and maintenance of institution granting medical relief. As already stated, the contention centered round the provisions of clauses 5 and 6 of the third schedule.

6. It is the argument of Mr. Joshi that it may be that the first four clauses relate to public purposes of a charitable nature. But it is not obligatory on the trustees to expend income for those purposes. Clause 2 of the trust deed has permitted the trustees to expend the money on any one or more of the objects mentioned in the six clauses of the third schedule. Clauses 5 and 6 do not relate to public purpose. On the other hand, they relate to the performance of the ceremonies mentioned therein for the repose of the soul of the deceased relations of the settlor and of himself and his wife after their death. Clause 6 authorises the trustees to pay or make contributions for the maintenance and support of the relations of the settlor mentioned therein, irrespective of their financial conditions. The said objects mentioned in clauses 5 and 6 could not be termed as public purposes. The trust deed permits the trustees to expend income solely on these private purposes. The properties, therefore, are not held for purposes of a charitable or religious nature. On the other hand, the trust really is of a private nature, providing for the support and maintenance of the relations of the settlor and for defraying the expenses of the religious ceremonies for the repose of the soul of the deceased members of the family of the settlor and of the settlor and his wife after their death. We find it difficult to accept the contentions raised by Mr. Joshi. When the trust deed is read as a whole, there can hardly be any doubt that the trust is of a private, religious and charitable nature. It is true that clause 5 authorises the trustees to pay the income of the trust

properties to Parsi Anjuman Agiary Fund or to the Parsee Panchayat for certain religious ceremonies for the repose of the soul of the members of the settlor's family, as well as for the performance of the said ceremonies for the repose of the soul of the settlor and his wife after their death. The clause also authorises the trustees instead of handing over the amount to the Agiary Fund or the Parsee Panchayat, to expend the income themselves for the said purpose. The said ceremonies which are to be performed are Baj Raojgar, Muktrad and other religious ceremonies. Now, it has been held by this court in *Jamshedji Cursetjee Tarachand v. Soonabai*, that though these ceremonies are performed for the repose of the soul of a deceased individual, the performance of these ceremonies also enures for the benefit of mankind at large, and the benefit from the performance of these ceremonies is shared by the public. The trust created for religious nature. The question that arose in that case for consideration related to the validity of a trust created by one Dinabai under her will, and the question was whether the trust was a public, charitable and religious trust. The trust, inter alia, provided that the income of certain properties be expended for the aforesaid religious ceremonies. Mr. Justice Davar held that the bequest for the performance of these religious ceremonies was a bequest for public purposes, and, therefore, the trust had been validly created. The ratio following from the decision has been summarised in the placitum. The material part read :

"The ceremonies themselves are acts of religious worship. They include worship, praise, and adoration for the Supreme Deity, and a thanksgiving for all his mercies. They contain petitions for benefits, both temporal and spiritual, for all Zoroastrians - for all holy and virtuous men of all other communities - and they comprise prayers for the well-being and long reign of the sovereign, for good Government by him, and for victory to him over all his enemies. The Muktrad ceremonies tend most unmistakably towards the advancement of the religion promulgated by the Persian Prophet Zoroaster, and there can be no doubt that the performance of these ceremonies is an act of Divine Worship in the highest and truest sense...

According to the belief prevailing amongst the faithful followers of the Prophet Zoroaster, the performance of the Muktrad ceremonies confers public benefits - benefits on the Zoroastrian community, on the peoples amongst whom they live and upon the country which they have chosen as their home. The fundamental principle underlying this belief is faith in the efficacy of prayers addressed to the Great Creator."

7. In this view of the matter, the validity of the trust was upheld. No good reasons have been shown to us to take a different view than taken by this court in the said decision. In our judgment, therefore, the object of purpose mentioned in clause 5 is a public of religious nature.

8. We also find it difficult to accept the contention of Mr. Joshi that clause 6 of the third Schedule

authorises the trustees to make payments or contributions towards the support and maintenance of the relations of the settlor and/or his father irrespective of their financial condition. The argument of Mr. Joshi is that clause 6 speaks of persons falling under two categories to whom the trustees could in their discretion make payment towards their support and maintenance. The first class or category consists of the lenial descendants of the children of Pestonji Pardiwala (father of the settlor) and/or any or more of the relatives, wife, children and family of Jehangir Pestonji Pardiwala, his brother and sisters (for brevity's sake we would refer to the persons falling under this category as "the relations"); and the persons falling under the second category or class consists of "indigent persons" of whatsoever creed or nationality who in the opinion of the trustee or trustees require support. As already stated, the argument of Mr. Joshi is that it is left to the discretion of the trustees to make payment or contribution towards the support and maintenance of the first category irrespective of their financial condition. It is only if the trustees desire to make payments or contributions towards the support of persons other than the relations, then their powers is restricted to make payments or contributions to indigent persons only. In view of the phraseology used in clause 6, it is not possible for us to accept the argument of Mr. Joshi. In our opinion, the clause speaks of one category only, and the category is of indigent persons. They may be relatives of the settlor or his deceased father, or they may be persons of whatsoever creed or nationality. The power given to the trustees under clause 6 is to make in their discretion payment according to the need of the persons requiring it. In making the choice the trustees have been directed to give preference to the relations of Jehangir Pestonji Pardiwala and his wife. The relations of Jehangir Pestonji Pardiwala and his wife would get aid not merely because they are the relations, but also because they are indigent persons. The difficulty in our way in accepting the contention of Mr. Joshi, firstly, is that the clauses relating to the said relations and indigent persons joined by clause "and/or other". The deed thus directs the trustees to make payment or contribution in support and aid to the said relations and/or other indigent persons. The use of the word "other" leaves no doubt that the reference to the relations only and not to all the relations irrespective of their financial condition. In the second instance, Mr. Joshi's contention would render the concluding clause commencing from "who in the opinion of the trustee...Pardiwala and his wife" entirely meaningless. We asked Mr. Joshi whether the said clause would govern the relations or the indigent persons. Mr. Joshi stated that the said clause would govern only the indigent persons. Now when the said clause is read only in conjunction with indigent persons the latter half of the said clause "preference being given to the relations of Jehangir Pestonji Pardiwala and his wife" becomes meaningless. If the relations form one separate category and the indigent persons of whatsoever creed and nationality form another separate category, then the question does not arise of giving preference to the relations in considering the question as to who required the support and aid. Similarly, if this clause is read only in conjunction with the relatives, the entire clause becomes meaningless, because then there would be no question of

ascertaining as to who requires support and aid. The concluding clause could be consistently read only as governing the relations as well as indigent persons. The clause authorises the trustees to give aid to all indigent persons including his relations as well as his father's relations and other persons of whatever creed or nationality. However, a direction has been given that in considering the case of all indigent persons, preference should be given to the indigent relations of the settlor and his wife. The dominant object is to grant relief to the indigent persons by making payment or contribution towards their support and aid. The circumstance that a direction has been given that in considering the case of such indigent persons preference be given to the relations, does not affect the validity of the trust or does not in any manner derogate from the trust being one for public purpose of a charitable nature. This is the view taken by the Supreme Court in Trustees of the Charity Fund v. Commissioner of Income-tax. Mr. Joshi sought to distinguish the decision in this case with the present case on the basis of the difference in the language used in the relevant clause (a) in that case with clause 6 in the present case. In the clause which was being considered by their Lordships, reference to the poor and indigent persons is made first, and the direction for giving preference to the poor and indigent members of the family of the settlor is given by way of a proviso to the said clause; while in clause 6 reference to the relations comes first and reference to the indigent persons comes next, and both these persons have been clubbed together in the main clause itself. But this variation in language, in our opinion, in substance makes no difference in the provisions contained in clause (a) in the deed which was being considered by their Lordships of the Supreme Court, and clause 6 which were have to construe. At page 520 of the report, it has been observe :

"The circumstance that in selecting the beneficiaries under sub-clause (a) preference has to be given, under the provisos, to the relations or members of the family of Sir Sassoon David, Bart., cannot effect that public charitable trust."

9. In this view of the matter, their Lordships held that the income of the said properties held on trust was excluded from computation of the total income of the assessee under section 4(3)(i) of the Income-tax Act. The ratio of the decision of their Lordships could equally apply to the facts of the present case. In our opinion, therefore, the Tribunal was not in error in holding that the properties held by the trustees were held by them on trust for public purpose of a charitable and religious nature. The said properties were, therefore, not liable to be included in the net wealth of the assessee, and, consequently, no wealth-tax was leviable on the assessee in respect of the trust property.

10. In the result, our answer to the question referred to us is in the affirmative. The Commissioner shall pay the costs of the assessee.

11. Question answered in the affirmative.

