

IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

HON'BLE THE CHIEF JUSTICE SRI VIPIN SANGHI
AND
HON'BLE SRI JUSTICE RAKESH THAPLIYAL

13TH JUNE, 2023

WRIT PETITION (M/B) No. 89 OF 2023

Between:

Society of the Brothers of
St. Patrick and another. ...Petitioners

and

State of Uttarakhand and others. ...Respondents

Counsel for the petitioners. : Mr. Kanwaljit Singh, learned counsel.

Counsel for respondent nos. 1 & 2. : Mr. Vikas Pande, learned Standing
Counsel for the State of Uttarakhand.

Counsel for respondent no. 3. : Mr. Ashish Joshi, learned counsel.

JUDGMENT : (per Sri Vipin Sanghi, C.J.)

We have heard learned counsels, and proceed
to dispose of the present Writ Petition.

2. The petitioners have preferred this Writ
Petition, firstly, to assail the amendment made to Section
177 of the Uttarakhand Municipal Corporation Act, 1959
(hereinafter referred to as the "Act"), with the deletion of
the words "for charitable purpose" from Section 177(b).
The petitioners further challenge Section 177(c) of the
Act, as being *ultra vires* the Constitution on the ground of
discrimination.

3. The petitioners also assail the order dated 03.04.2023, passed by the Municipal Commissioner, Nagar Nigam, Dehradun, holding that the petitioner - St. Joseph's Academy, is liable to pay property tax under Section 174 of the aforesaid Act, and, simultaneously, rejecting the objection of the petitioners herein.

4. Petitioner no. 1, i.e. Society of the Brothers of St. Patrick, claims to be a charitable society, which is running an educational institution under the name "St. Joseph's Academy". St. Joseph's Academy, which has been impleaded as respondent no. 2, is an unaided private minority educational institution. The petitioners claim that petitioner no. 2 has been set-up for the benefit of the public, and it has been running the school for more than 70 years. Petitioner no. 1 was conveyed 86.569 bighas of land bearing Old Plot No. 4 (bearing Plot No. 266), Dehradun, Civil Station, Nazul Khasra situated at Rajpur Road, Dehradun by way of a lease. The leasehold rights were lastly renewed, w.e.f. 04.01.1994 for 30 years, vide registered renewal of lease.

5. The petitioners claim that petitioner no. 2 is being run on no profit basis, and the building of the

School is being exclusively used for the cause of education.

6. The petitioners state that they instituted Suit No. 147/1996, titled “**Society of Brothers of St. Patrick v. Municipal Board Dehradun**” to seek an injunction, restraining the Municipal Board/ Nagar Nigam, Dehradun from claiming/ recovering any municipal tax, particularly House Tax. The said Suit was decreed *ex parte*, vide judgment/ decree dated 24.02.2000. The application moved by the City Commissioner, Nagar Nigam, Dehradun, i.e. respondent no. 3 herein, under Order 9 Rule 13 CPC, was dismissed on 04.02.2015. The petitioners disclose that respondent no. 3 filed Suit No. 62/2001, titled “**Nagar Nigam v. Society of Brothers St. Patrick**”, to challenge the *ex parte* decree passed in Suit No. 147/1996. The stay of the earlier decree dated 24.02.2000, granted by the Trial Court, was vacated in Miscellaneous Civil Appeal No. 137/2005. Eventually, the said appeal was allowed vide order dated 15.09.2005.

7. It is further disclosed that respondent no. 3 issued a notice dated 11.03.2022 to petitioner no. 2, alleging that property of St. Joseph's Academy is being run for commercial/ non-residential purpose, and, as per

the amendment made in the year 2002, in Section 177 of the Uttarakhand Municipal Corporation Act, 1959, the petitioners are liable to pay property tax. A demand notice was issued on 27.05.2019 for an amount of Rs. 11,50,000/-, covering the year up to 2014-15. The petitioners raised their objections to the said demand notice. The petitioners state that the said objections have not been heard, and by the order dated 03.04.2023, the petitioners have been held liable to pay property tax as per the demand notice dated 27.05.2019.

8. At this stage, we may take note of the relevant provision, namely Section 177 of the Uttarakhand Municipal Corporation Act, 1959. The said provision, as it existed prior to its amendment in the year 2002 (vide Uttarakhand Act No. 19 of 2002 w.e.f. 21.12.2002), insofar as it is relevant, reads as follows :-

“177.General tax on what premises to be levied. - The general tax shall be levied in respect of all buildings and lands in the City except –

- (a) buildings and lands solely used for purposes connected with the disposal of the dead;*
- (b) buildings and lands or portions thereof solely occupied and used for public worship **or for a charitable purpose;***
- (c) building solely used as schools and Intermediate colleges **whether aided by the State Government or not;**”*

(emphasis supplied)

9. The aforesaid provision would show that prior to its amendment in the year 2002, exemption from payment of general tax was granted in respect of all buildings and lands in the city, which were solely used as, *inter alia*, schools and intermediate colleges, whether aided by the State Government, or not under Clause (c) of Section 177 of the Act. Thus, all buildings, used as schools and intermediate colleges, including those belonging to private schools and intermediate colleges, were exempted from payment of property tax.

10. Section 177(c) of the Act was amended vide Amendment Act No. 19 of 2002, w.e.f. 21.12.2002. Post this amendment, Section 177, insofar as it is relevant, reads as follows :-

“177.General tax on what premises to be levied. -
The general tax shall be levied in respect of all buildings and lands in the City except –

- (a) buildings and lands solely used for purposes connected with the disposal of the dead;*
- (b) buildings and lands or portions thereof solely occupied and used for public worship or for a charitable purpose;*
- (c) building solely used as school and colleges and owned by Government;”*

11. Thus, after the amendment of Section 177 on 21.12.2002, exemption from levy of general tax was continued in respect of all buildings and lands in the city,

solely used as schools and colleges, and owned by the State Government. However, exemption, which was earlier available to private schools and colleges, was taken away.

12. The case of the petitioners is that, even after the amendment of Section 177(c), the private unaided schools continued to avail of the exemption by resort to Section 177(b), since education has been recognized as a charitable purpose.

13. Section 177 of the Act was further amended by the Uttarakhand Amendment Act No. 16 of 2016, w.e.f. 02.08.2016. After the said amendment, Section 177, insofar as, it is relevant, reads as follows :-

***“177.General tax on what premises to be levied. -
The general tax shall be levied in respect of all
buildings and lands in the City except –***

(a)

(b) *buildings and lands or portions thereof
solely occupied and used for public
worship;*

(c) *building solely used as schools and colleges
and owned by the Government;”*

14. It would, thus, be seen that Clause (b) of Section 177 was amended, to take away the exemption, which was earlier available to lands and buildings solely occupied and used for charitable purposes.

15. The submission of learned counsel for the petitioners is that, since education has been recognized as a charitable purpose by the Supreme Court in ***T.M.A. Pai Foundation and others v. State of Karnataka and others, (2002) 8 SCC 481*** in paragraph nos. 84 and 91 thereof, the exemption from payment of general tax, under Section 177 of the Act could not have been withdrawn. It is also argued that there is discrimination between government schools – who are exempted from payment of general tax, and private unaided schools – who are now exposed to suffer general tax, even though all schools are carrying out the same activity, i.e. imparting education.

16. Learned counsel for the petitioners further relies on the judgment of the Supreme Court in ***Society for Unaided Private Schools of Rajasthan v. Union of India and another, (2012) 6 SCC 1***, to submit that the right to establish a school is a fundamental right. Learned counsel submits that, by imposing general tax under Section 177 of the Municipal Corporation Act, 1959, the fundamental right of the petitioners to establish and run their educational institution is being infringed.

17. The further submission of learned counsel for the petitioners is that in the face of the judgment and decree dated 24.02.2000, the respondents cannot impose any property tax on the petitioners. It is also argued that the land in question, on which the petitioner-school has been established is a Nazul land, and, therefore, the same is exempted from payment of property tax under Section 177(f), which provides exemption from payment of general tax in respect of all buildings and lands in the city vesting in the Union of India, except where provisions of clause (2) of Article 285 of the Constitution of India apply.

18. We have considered the aforesaid submissions of learned counsel for the petitioners. However, we do not find any merit in either of them.

19. So far as the judgment and decree dated 24.02.2000, passed in Suit No. 147/1996, is concerned, that decree was rendered when the amendment to Section 177 had not been made in the year 2002. As we have already noticed, prior to its amendment in the year 2002, Section 177 granted exemption from payment of general tax in respect of all buildings and lands in the city, being solely used as school and college, irrespective

of whether they were owned by the Government, or not. Thus, even private schools and colleges were covered by the said exemption. It was in the light of the aforesaid provision that the said judgment and decree had been rendered. Since the law was amended, firstly, in the year 2002, vide Amendment Act No. 19 of 2002, w.e.f. 21.12.2002, and again in the year 2016, vide Amendment Act No. 16 of 2016, w.e.f. 02.08.2016, the said judgment and decree dated 24.02.2000, would have no relevance for the period post the said amendments. In relation to the periods after the amendment of Section 177 of the Act in the years 2002 and 2016, the matter would have to be examined afresh, in the light of the amended provisions, without the aid of the said judgment and decree dated 24.02.2000.

20. The submission of the learned counsel for the petitioner, premised on the judgment of the Supreme Court in ***T.M.A. Pai Foundation*** (supra), and the judgment of the Supreme Court in ***Society for Unaided Private Schools of Rajasthan*** (supra), is also of no avail, for the reason that there is no embargo in any law to the imposition of property tax by the competent legislature, in respect of lands and buildings used for a charitable purpose, or for education, merely because the

lands and buildings may be used for a charitable purpose, or for education. The fundamental right of the petitioners to carry on their educational activity as a minority unaided institution, is not, in any way, hampered or infringed, merely because exemption from payment of general tax has been taken away by the amendments carried out in Section 177 of the aforesaid Act in the years 2002 and 2016. By its very nature, an exemption is a relaxation; a holiday granted by the competent authority from fulfilling an obligation, which, the subject is otherwise obliged to fulfill in law. The competent authority is entitled to withdraw the exemption at any point of time, and the subject cannot claim it as a matter of right, in perpetuity. Pertinently, the petitioners do not claim an equitable right to continue to avail of the exemption on the basis of any promise or representation made by the State – that the petitioners would continue to enjoy the exemption in perpetuity. No case of promissory estoppel has been made out by the petitioners. The aforesaid judgments nowhere state that private unaided minority institutions would continue to remain exempted from payment of general tax, only on account of their status as private unaided minority

institutions, or only on account of the fact that they carry on a charitable activity.

21. The submission of learned counsel, premised on the fact that the land, on which the building of the school has been constructed, is Nazul land, is also neither here, nor there. Section 177(f) only relates to buildings and lands vesting in the Union of India. It is not the petitioners' case that the Nazul land in question vests in the Union of India. In any event, the petitioners do not dispute the fact that the building of the school vests in the petitioners.

22. The submission that there is discrimination against private unaided schools is also meritless. Private unaided schools are a class apart from government schools. Whereas, private unaided schools are entitled to manage their affairs, and fix and charge their fee and other expenses by factoring in the expenses that they incur – including towards payment of taxes, the government schools are either completely free, or run on a nominal charge under the governmental policies. Thus, there is no discrimination, as they fall in different classes, and the classification has a reasonable nexus to the object sought to be achieved by Section 177 of the Act.

23. For the aforesaid reasons, we find no merit in the petitioners' challenge to the amendments carried out to Section 177 (b) and 177 (c) of the Act, and the relief (a) sought in the Writ Petition, being meritless, is dismissed.

24. So far as the challenge to order dated 03.04.2023 is concerned, the petitioners have a statutory remedy by way of an appeal before the Prescribed Authority, under Section 472 of the Uttarakhand Municipal Corporation Act, 1959.

25. We, therefore, leave it open to the petitioners to avail of the said remedy. Since the petitioners have been pursuing the present Writ Petition, delay in filing the appeal under Section 472, shall not come in the way of the petitioners, provided the appeal is preferred in the next two weeks. All other pleas available to the petitioners are left open to be taken in the appeal. It is made clear that no observation made in the present judgment, relating to the computation of liability of the petitioners towards payment of general tax/ property tax, for the period in question, shall come in the way of the parties, and the Prescribed Authority shall decide the Appeal, that may be preferred, on its own merits.

26. The Writ Petition stands disposed of in the aforesaid terms.

27 Consequently, pending application(s), if any, also stand disposed of accordingly.

VIPIN SANGHI, C.J.

RAKESH THAPLIYAL, J.

Dt: 13th June, 2023
Rahul