IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1057 OF 2015

Sindhu Educational Trust ...Petitioner
Versus
The State of Maharashtra & Ors. ...Respondents

Mr. Rampal Singh Kohli for the Petitioner

Mrs. M. P. Thakur, A.G.P for the Respondent No.1

Mr. Shrikrishna R. Ganbavale for the Respondent Nos. 2 to 4

CORAM : A. S. OKA AND
REVATI MOHITE DERE, JJ.

FRIDAY, 12th JUNE, 2015

P.C. :

1. Heard learned Counsel appearing for the petitioner and the learned Counsel for the second respondent-Municipal Corporation.

2. The petitioner applied for grant of exemption from payment of general tax in accordance with clause (b) of sub-section (1) of Section 132 of the Maharashtra Municipal Corporations Act, 1999 (for short `the said Act'). Under clause (b) of sub-section (1) of Section 132, exemption can be granted, provided the buildings and lands or portions thereof in respect of

which exemption is claimed, are solely occupied and used for public worship or for a public charitable purpose.

3. On 5th January, 2012, the petitioner made an application to the second respondent – Municipal Corporation for grant of exemption for the financial year 2012-2013. By order dated 4th December, 2013, the said application was rejected. In Writ Petition No. 2886 of 2013, by a Judgment and Order dated 30th April, 2014, this Court by setting aside order dated 4th December, 2013, directed the Assistant Commissioner of the second respondent – Municipal Corporation to pass a fresh order in the light of the law laid down in the said Judgment and Order. The petitioner was permitted to produce additional documents.

4. Thereafter, by the impugned order dated 22nd August, 2014, the Assistant Commissioner of the Municipal Corporation has rejected the representation for grant of exemption.

5. The learned Counsel appearing for the petitioner invited our attention to the impugned order. He submitted that exemption has been

denied only on the ground that the petitioner trust has large fixed deposits which have increased from year to year and that a sum of Rs. 70,93,682/- is the amount collected by the petitioner by way of fees. He invited our attention to the Judgment and Order dated 30th April, 2014 and the law laid down therein. He pointed out that only on the ground that the petitioner is collecting fees from the students, the exemption cannot be denied. He pointed out that the fact that to claim exemption, it is not necessary to show that the school is rendering free education to all or to some of the students. He pointed out that this Court has held that existence of large fixed deposits in the name of the petitioner, is no ground to deny exemption. He urged that notwithstanding the law laid down by this Court in the said decision, now the prayer for exemption has been rejected only on the ground that the petitioner has large fixed deposits. He, therefore, submitted that the error which was committed earlier by the Assistant Commissioner, has been again committed in the impugned order. He urged that as the petitioner could not produce the audited accounts of the petitioner of the year 2012-2013, the matter may be remanded to the Assistant Commissioner.

6. The learned Counsel appearing for the Municipal Corporation pointed out the conduct of the petitioner. He urged that after giving several opportunities, the petitioner has not produced the accounts for the relevant year.

7. We have carefully perused the impugned order. We have also perused the law laid down by this Court in the Judgment and Order dated 30th April, 2014. Under the said order, while passing an order of remand, the petitioner was granted liberty to produce the documents. From communication dated 21st June, 2014 (Exhibit M to the petition), it appears that the petitioner has filed written submissions on 12th May, 2014 and was given opportunity to produce further documents by directing it to produce the same on 30th June, 2014. It is an admitted position that the petitioner did not produce the audited accounts of the relevant year 2012-2013. By letter dated 16th July, 2014, before passing the impugned order, the Assistant Commissioner called upon the petitioner to submit further information. The further information was sought on six points. One of the points set out in the said letter was whether any portion of the property in question was being used for commercial or other purpose. By letter dated

23rd July, 2014, the petitioner responded by stating that no part of the property is being used commercially purpose. The petitioner disclosed that there were 1251 students on the roll of the school run on the said property in the year 2012-2013 and the total amount of fees collected was Rs. 70,93,682 as per the balance-sheet. Thus, this was one more opportunity available for the petitioner to produce the audited accounts of the year 2012-2013. It is not the case of the petitioner that audited accounts were not ready by July, 2014. Even assuming that audited accounts were not ready , the petitioner could have placed on record a copy of the unaudited accounts.

8. It will be necessary to make a reference to the Judgment and Order dated 30th April, 2014 passed by this Court in the earlier petition filed by the petitioner. This Court in paragraph 24 has observed thus :

> "The Petitioner is involved in several activities. The test for applicability of Sub-section (1) of Section 132 of the said Act of 1949 is whether a building or land is used for public charitable purposes. <u>If it is established that large fixed deposits are created by using the income earned from the land or building in respect of which exemption is sought, exemption will have to be denied</u>. Existence of large fixed deposits in the name of the Petitioner by itself is no ground to deny exemption. Moreover, it is not necessary to show for grant of exemption that the school is rendering free education to all or some of the students. Thus, we

> find that the approach of the Assistant Commissioner is erroneous and contrary to the law and, therefore, the representations made by the Petitioner will have to be decided by him a fresh in the light of the observations made in the judgment.”
>
> (Underline supplied)

9. This Court has observed that if it is established that large fixed deposits have been created by using the income earned from the land or building in respect of which exemption is sought, the same will have to be denied. What was disclosed by the petitioner before the Assistant Commissioner was the figure of the amount collected by the students by way of fees. It was necessary for the petitioner to disclose what was the expenditure incurred on running of the School. It was necessary for the petitioner to show what were the investments made during the relevant year and the source of money invested. The petitioner was also required to disclose the income earned from various sources. The account of the year 2012-2013 could have thrown light on the aforesaid relevant aspects. For determining the question whether the property was being used solely for charitable purpose, the production of audited accounts of the petitioner of the said year was absolutely necessary. As stated earlier, number of opportunities were available to the petitioner to produce the accounts. The petitioner has conveniently produced the accounts only up to the financial

year 2011-2012.

10. The burden to prove that the property subject to payment of tax was used exclusively for charitable purpose, was on the petitioner. It is in this context that in the impugned order, the Assistant Commissioner has observed that the petitioner was required to give explanation regarding the use of its properties in the financial year 2012-2013.

11. Now it is too late in the day to seek an order of remand on the ground that an opportunity deserves to be granted to produce the audited accounts of the Petitioner trust for the year 2012-2013. Even along with the petition, a copy of said accounts have not been produced. The petition was filed three months after passing the impugned order dated 22nd August, 2014. Today, learned Counsel for the petitioner has tendered additional compilation which contains audited accounts only up to the financial year 2011-2012. Thus, for a period of two years and two months from the end of the year 2012-2013, the petitioner could not produce audited or even unaudited accounts for the year 2012-2013.

12. Thus, no case is made out for passing an order of remand.

13. In absence of accounts of the concerned year being placed on record, the Assistant Commissioner was justified in drawing the inferences which he has drawn in the impugned order.

14. There is no merit in the petition. There is no warrant to interfere with the impugned order in the writ jurisdiction under Article 226 of the Constitution of India. Petition is accordingly rejected.

(REVATI MOHITE DERE, J.) **(A. S. OKA, J.)**