

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

THURSDAY, THE 11TH DAY OF JUNE 2015/21ST JYAISHTA, 1937

WA.No. 831 of 2009 IN WP(C).33191/2005

AGAINST THE JUDGMENT IN WP(C) 33191/2005 of HIGH COURT OF KERALA
DATED 29-08-2008

APPELLANT/PETITIONER:

ANANTHAPURI EDUCATIONAL SOCIETY,
SARASWATHY VIDYALAYA, VATTIYOORKAVU
THIRUVANANTHAPURAM, REP. BY ITS GENERAL SECRETARY
SRI.RAJ MOHAN.

BY ADV. SRI.PRAMAKRISHNAN

RESPONDENTS:

1. THE SECRETARY,
CORPORATION OF THIRUVANANTHAPURAM.
2. THE REVENUE OFFICER,
CORPORATION OF THIRUVANANTHAPURAM.
3. THE TRIBUNAL FOR LOCAL SELF GOVT. INSTITUTIONS,
THIRUVANANTHAPURAM.

R R1,2 BY ADV. SRI.N.NANDAKUMARA MENON (SR.)
R R1,2 BY ADV. SRI.P.K.MANOJKUMAR
R BY GOVERNMENT PLEADER SRI.ROSE MICHAEL.

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 11-06-2015, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:

ANTONY DOMINIC & SHAJI P.CHALY, JJ.

Writ Appeal No.831 of 2009

Dated this the 11th day of June, 2015

JUDGMENT

Antony Dominic, J.

In this appeal, appellant challenges the judgment of the learned Single Judge dismissing the Writ Petition No.33191/05. In the writ petition, appellant challenged an order passed by the Tribunal for Local Self Government Institutions claiming that the educational institution established and affiliated by the CBSE (Central Board of Secondary Education) was eligible for exemption from property tax as provided under Section 235(1)(d) of the Kerala Municipalities Act prior to its substitution by Act 30 of 2009.

2. Briefly stated, the facts of the case are that the appellant is a charitable society which has established a school that is affiliated to CBSE, New Delhi. They were assessed for property tax for the period 1998-1999 to 2004-2005. In an appeal that was filed by them to the Tribunal for Local Self Government Institution, the appellant contended that it was entitled to exemption from the levy of property tax in view of Section 235(1)(d) of the

Kerala Municipalities Act. That contention that was rejected by the Tribunal which lead to the filing of the Writ Petition. In the judgment under appeal, the learned Single Judge held that the issue is covered against the appellant in view of the judgment of this Court in ***Sr. Poly Paradiyil v. Angamaly Municipality [2005(2) KLT 88]***. It is the correctness of this judgment, which is called in question in this appeal.

3. We heard the counsel for the appellant, senior counsel appearing for the first respondent and the learned Government Pleader appearing for respondents 2 and 3.

4. The question that arises for consideration is whether the appellant is eligible for exemption from property tax as contended by them. As we have already stated, the dispute pertains to the period 1998-1999 to 2004-2005. During the relevant period, 235(1)(d) of the Kerala Municipalities Act provided for exemption from property tax buildings recognised by the Government or registered with Municipality under the Act and owned and occupied by the educational institutions and used only for teaching. In the judgment in ***Sr. Poly Paradiyil***

(supra), this provision was interpreted by a learned Single Judge of this Court who took the view that the expression “buildings recognised by the Government” occurring in the Section meant buildings owned by recognised educational institutions, under the provisions of the Kerala Education Act and Rules. It was also held that the expression “building registered with the Municipality” used by the legislature must be to mean buildings owned by such registered institutions. Subsequently, this very provision was interpreted again in the judgment in ***Anthony v. Karvarnan 2008 (3) KLT 431 (SC)***. In this judgment, though reference is not seen made to the judgment in ***Sr. Poly Paradiyil (supra)***, learned Judge held that a rational meaning to be assigned to Section 235(1)(d) shall be the one which provides for exemption to all buildings used as educational institutions for running any course recognised by the Government. Proceeding further, it was clarified that in a building “ if petitioner is running any educational course recognised by the Government, then petitioner is entitled to exemption from property tax by virtue of the provision referred above”. Though these provisions

have been again referred to in the judgments of this court in ***Fathima Public School, Kollam v. State of Kerala and another [2013 (2)KLT 527]*** and ***Cherthala Municipality v. Usha P. Panicker [2015 (1)KLT 134]***, the ratio of these judgments have not been diluted. This, therefore, means that only if the educational course imparted in the educational institution is one recognised by the Government of the State then and then only, the benefit of Section 235(1)(d) would be available.

5. In so far as this case is concerned, admittedly, the school is not recognised by the Government, but is affiliated to CBSE. It is true that the school was established and affiliation obtained on the strength of Ext.P1, a no objection certificate issued by the State Government. Though the counsel wanted Ext.P1 to be taken as a recognition by the State Government, we are unable to agree with him.

6. This, therefore, means that the school established by the appellant did not satisfy the requirements of Section 235(1)(d) as it stood prior to its amendment by Act 30 of 2009. If that be so, the judgment of the learned Single Judge upholding the order of the

Tribunal declining the claim of the appellant for benefit of exemption under Section 235(1)(d) of the Kerala Municipalities Act cannot be interfered with.

Appeal fails and it is accordingly dismissed.

Sd/-
ANTONY DOMINIC
JUDGE

Sd/-
SHAJI P. CHALY
JUDGE

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