

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.10.2020

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. No.32041 of 2019

and

WMP.No.32294 of 2019

Parivar Seva Sanstha
Reproductive Heal Services
Rep by its Clinic-Executive
Mrs.K.Vani
No.8/4, Mahalakshmi Street,
T.Nagar,
Chennai-600 017

... Petitioner

Vs.

The Commissioner
The Corporation of Chennai
Ripon Buildings
Chennai 600003

...Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records on the file of the respondent in Z.O.X.R.D.C.No.8637/2018 dated 22.07.2019 and consequent demand notice dated 10.09.2019 and quash the same as illegal, arbitrary and inequitable and consequently direct the respondent to grant exemption to the writ petitioner from payment of property tax, for the property bearing Door No.8/4, Mahalakshmi Street, T.Nagar, Chennai-600 017.

For Petitioner : Mr.P.B.Balaji

For Respondent : Mr.P.H.Aravind Pandian
Additional Advocate General assisted
by
Mrs.P.T.Ramadevi,
Standing Counsel

O R D E R

The petitioner is the Parivar Seva Sanstha, an organisation registered under the Societies Registration Act, 1860 on 11.09.1978. It was originally called the Marie Stopes Society

and the name was changed to the present one on 24.01.1982. It claims to be a non-governmental, not-for-profit organisation rendering reproductive welfare and health care services including family planning services.

2. It runs 32 clinics pan India and is engaged in the activities of population control, medical relief, social marketing of contraceptives, mass level programmes, the education of youth in family planning, and other societal measures in the aforesaid areas. It states that it works in close association with, and under the guidance of the relevant Ministry of Government of India and the concerned State Governments. The contraceptives that it distributes as part of its social marketing initiatives are provided by the Ministry of Health and Family Welfare (GOI).

3. As regards the education of the youth, using formal and non-formal platforms, it provides counselling in ante-natal and post-natal care, measures for immunisation and for AIDS/HIV prevention, STI/RTI screening and treatment, sterilization, a wide range of contraceptives including injections, IUD, condoms and pills and services of medical termination of pregnancy.

4. The petitioner in this writ petition is the clinic run by the Sanstha in Chennai and the target group is the economically weaker sections of the society. Only outpatients are entertained and no inpatients are admitted. The question that arises in this writ petition is whether the petitioner is entitled to exemption from the payment of property tax in terms of the Madras City Municipal Corporation Act, 1919 ('Act') that extends an exemption for various categories of organisations and activities under Section 101 thereof.

5. The petitioner, in response to demands of property tax in the year 2002 had communicated with the Corporation/respondent seeking the benefit of exemption from property tax. The demands however, continued, as a result that the petitioner filed a formal representation staking its claim for exemption.

6. Notwithstanding the representation, the respondent initiated coercive recovery actions by attachment of furniture from the petitioners' premises on 24.02.2003, which came to be challenged in W.P.No.25872 of 2003. A conditional stay of collection was granted by this Court. Finally this Court directed the petitioner to file yet another representation seeking exemption from payment of property tax and directed the respondent to conduct enquiry and pass orders thereupon.

7. On 29.06.2018 an exemption application came to be filed before the respondent. Enquiry was conducted and various documents sought. An order was passed on 30.08.2018 rejecting the request, which came to be challenged in W.P.No.28626 of 2018. The order impugned in that writ petition was set aside on the short ground that the earlier directions of the Court to consider and dispose the representation were to the Commissioner, whereas, the impugned order had been passed by the Deputy Commissioner. Thus, this Court directed the Commissioner, specifically, to hear the petitioner and pass an order on the grant or otherwise of exemption within a period of eight weeks from date of receipt of a copy of that order.

8. Pursuant thereto, a hearing was conducted on 16.05.2019 that has culminated in the impugned order dated 22.07.2019 rejecting the request for exemption which is challenged in this writ petition. The grounds raised by the petitioner before the Commissioner have been summarised in the impugned order, reading as under:

The grounds in your representation states that your institution,

(a) is a registered charitable organization and carrying charitable activities providing various family planning services on no loss no profit basis towards weaker section and downtrodden class of the society.

(b) in the Chennai City Municipal Corporation Act, 1919 provides exemption to the charitable organization and the in said Act the definition for charitable has not been defined and the definition may be found out from the Income Tax Act.

(c) the Nil returns filed before the income Tax Department with relevant Annexures.

(d) the various health services provided by the charitable organization under nominal amount

9. The discussion and operative portion of the order rejecting the claim for exemption read thus:

It is observed on hearing, grounds on your representation and field inspection carried by this authority that the following facts nevertheless to be mentioned:

- Under the provisions of the Chennai City Municipal Corporation Act, 1919 section 101 defined the general exemptions from levying property tax, in sub-section (e) charitable hospitals and dispensaries but not including residential quarters attached thereto.

- The Director of Income Tax (Exemptions) in their order no.DIT(E)/2012-13/973, dt.13.08.2012 had granted exemption for the period A.Y.2012-13 onwards till it is rescinded stipulating certain conditions. In such condition- (ii) every receipt issued to donor shall bear the number and date of the order issued by the Director of Income Tax (Exemptions) and shall state the date up to which this certificate is valid from A.Y.2012-2013 onwards till it is rescinded. (iii) no change in the deed of the trust/association shall be affected without the due procedure of law and its intimating should have been given immediately to the Director of Income Tax (Exemptions). (vii) no fee or any other consideration shall be received which comes under the proviso to section 2(15) of the Income Tax Act.
- The field inspection carried by this Authority reveals that the charitable organization is levying charges for various health services provided.

After detailed and careful examination it is ascertained that the Parivar Seva Sanstha Reproductive Health Services functioning at Door No.17/4 (8/4), Mahalakshmi Street, Theyagraha Nagar, Chennai- 600 017 bearing property tax assessment bill no.10-136-03342-000

(1) is levying charges/amount as admitted by themselves in their representation furnished during the hearing conducted in 16.05.2019 for the health services carried by the organization.

(2) That, the organization is periodically remitting water/sewage tax/charges to the CMWSSB.

(3) That it is unable to ascertain that the Memorandum of Association has been updated as per the conditions mentioned by the Director of Income Tax (Exemptions) in their order no.DIT(E)2012-13/973, dt.13.08.2012 clause (iii).

(4) That the organization is charging against the condition clause (vii) mentioned by the director of Income Tax (Exemptions) in their order no.DIT(E)/2012-13/973, dt.13.08.2012.

(5) While inspection by this authority, it is evident from the reports that the charitable organization is levying variable amount for different health services and issuing receipt

without the exemption order no. as specified in the order issued by the Director of Income Tax (Exemptions), dt. 13.08.2012.

10. Section 101, in so far as it relates to this petitioner, reads thus:

101. General exemptions.--- The following buildings and lands shall be exempt from the property tax :--

(a) to (d)

(e) charitable hospitals and dispensaries but not including residential quarters attached thereto;

(f) to (h)

11. The petitioner relies on the decision of a learned Single Judge of this court in Govel Trust Vs. The Commissioner and Others (order dated 13.11.2019 in W.P.No.6014 and 6015 of 2018). The Govel Trust manages and runs the Aravind Eye Hospital. The learned Single Judge noted that it is a public charitable trust established with yeoman objectives of both research and establishment of hospitals, facilitating quality ophthalmic care. At the hospitals run by the Trust at Madurai and Kalapatti Town Panchayat (merged with Coimbatore Corporation), exemption was granted as per orders of this Court dated 10.05.1994 in W.P.No.3235 of 1985 and 23.01.2009 in W.P.Nos.14414 and 14415 of 1999 respectively. Likewise, in respect of hospital at Theni, Allinagaram, the Commissioner has himself accepted the request for grant of exemption. The demands of property tax raised by the Coimbatore Corporation, came to be challenged by the Trust and had come to be decided by this Court in favour of the Trust, confirmed by the Supreme Court in Special Leave. Following the rationale of the aforesaid orders, the writ petition was allowed.

12. Per contra, the decisions relied on by the revenue are discussed below:

In The Special Officer and Commissioner, Tiruchirapalli Corporation, Tiruchirapalli Vs. Hindu Mission Hospital, represented by its secretary (2008 2 L.W. 159), a Division Bench of this Court considered the grant of exemption to the Hindu Mission Hospital in terms of the Tami Nadu District Municipalities Act, 1920, specifically Section 86(e) thereof, which enumerated that certain categories of buildings and lands including 'charitable hospitals and dispensaries but not including residential quarters attached thereto' shall be exempt from the levy of property tax. After considering the ambit of

the Section, the Bench held that though word used in the provision was 'shall' and ordinary, the word 'shall' is to connote a mandate, this was not an invariable rule but should be seen in the context or intention of the provision. It was held that the use of the word 'shall' in Section 82 was only directory keeping in mind the intendment of the enactment and the context in which the word has been used.

13. After upgradation of the Tiruchirapalli Municipality as a corporation the provisions of the Coimbatore Municipal Corporation Act was made applicable to the Tiruchirapalli Corporation as per which Section 123 would be the applicable provision. Section 123 was couched in terms identical to Section 86. The Bench thus held that despite the use of the word 'shall' the exemption extended under Section 123 was not automatic.

14. The Bench noted that there was several factors that would weigh in the grant of exemption and discussed the decisions in The Municipal Corporation of Coimbatore Vs. Govindasamy Naidu Hospital (K.G.hospital) by its Govindasamy Naidu Trust (2004 2 L.W. 146) and S.N.R. Sons Charitable Trust, Coimbatore Vs. The Commissioner, Coimbatore City Municipal Corporation, Coimbatore (1993 10 WLR 769) to decide question of whether the income earned by the hospital by way of rent or charges paid by patients or donations should be granted exemption. In conclusion, the Bench held that this question involved the appreciation of relevant facts on a case to case basis and set aside the demand in that case permitting the hospital to make a representation to the corporation enclosing all relevant material objecting to the levy of property tax.

15. The respondent has relied on the decision of the Division Bench in Govindasamy Naidu Hospital (supra) wherein, at para 20, the Bench states that the onus of proof lies heavy upon the hospital to establish that profit, if any, earned by it has been utilised towards charitable purposes only. The ratio laid down to my mind, is not that a charitable institution or hospital should not earn profit at all but such profit should be utilised by it in line with its objectives. It is this aspect that should be proved by the charitable institutions.

16. In Velammal Educational Trust Vs. State of Tamil Nadu and Others (Batch) (2017 SCC online Madras 37345), a learned Single Judge considered a claim put forth by the Velammal Educational Trust that claimed exemption on the ground that its activities centered around the achievement of various noble and socially oriented objectives. After taking note of the decisions

of the Division Bench that I have referred to above, the learned Judge held that the grant of exemption was not automatic but has to be established by way of evidences put forth by the applicant. The petitioners were granted liberty to make a representation seeking exemption, to be considered and appropriate orders passed by the respondent. In Sundaram Medical Foundation Vs. Commissioner, Corporation of Chennai (2017 7 MLJ 802), a learned Single Judge of this Court considered a similar claim by the petitioner foundation and the same view as expressed by the Division Bench was reiterated in this case as well.

17. In Municipal Corporation of Delhi Vs. Children Book Trust (1992 3 SCC 390), the Supreme Court considered the grant of exemption under the Delhi Municipal Corporation Act, 1957 wherein an exemption was available under Section 115(4)(a) to lands and buildings occupied and used by a society for charitable purposes. The broad parameters that were indicated as being relevant to be considered for the grant of exemption were that (i) the dominant objectives of the society be charitable and not to earn profit (ii) since the petitioners in that case were engaged in the dissemination of education, such activity must in the nature of public benefit or philanthropy (iii) the entity seeking exemption must be supported wholly or in part by voluntary contribution (iv) excess/surplus income must be utilised for the promotion of objectives and must not be distributed as dividend bonus or profit to its members or diverted elsewhere.

18. Paragraphs 82 to 85 are relevant and are extracted below:

82. It cannot be gainsaid that the municipal general tax is an annual tax. Therefore, normally speaking, the liability for taxation must be determined with reference to each year. In other words, the society claiming exemption will have to show that it fulfills the conditions for exemption each year. If it shows, for example, that for its support it has to depend on, either wholly or in part, voluntary contributions, in that particular year, it may be exempt. But where in that year, for its support, it need not depend on voluntary contributions at all or again if the society produces surplus income and excludes the dependence on voluntary contributions it may cease to be exempt. Of course, the word "support" will have to mean sustenance or maintenance. Only to get over

this difficulty that the qualitative test is pressed into service. We would consider the reasonable way of giving effect to the exemption, will be to take each case and assess for a period of five years and find out whether the society or body depends on voluntary contributions. Of course, at the end of each five year period the assessing authority could review the position. In other words, what we want to stress is, where a society or body is making systematic profit, even though that profit is utilised only for charitable purposes, yet it cannot be said that it could claim exemption. If, merely qualitative test is applied to societies, even schools which are run on commercial basis making profits would go out to the purview of taxation and could demand exemption. Thus, the test, according to us, must be whether the society could survive without receiving voluntary contributions, even though it may have some income by the activities of the society. The word "part" must mean an appreciable amount and not an insignificant one. The "part" in other words, must be substantial part. What is substantial would depend upon the facts and circumstances of each case.

83. The word "contribution" used in the proviso must also be given its due meaning. It cannot be understood as donations. If that be so, a voluntary contribution cannot amount to a compulsive donation. If the donor, in order to gain an advantage or benefit, if he apprehends that but for the contribution some adverse consequence would follow, makes a donation certainly it ceases to be voluntary.

84. Therefore, we conclude that the test to be applied is not merely qualitative but quantitative as well.

85. The last aspect of the matter is utilisation of the income in promoting its objects and not paying any dividend or bonus to its members. The learned counsel for the appellant and the intervener would urge that on the basis of Cane (Valuation Officer) and Another (supra) (1961(2) Queen's Bench Division 89) the position in the instant case is the same. At Page 121 the following observation is found:

"One, I think, that enriches the corporation itself or relieves it of a burden or furthers its objects or powers."

19. The Bench examined the details of income and expenditure noting specifically, that contributions were being made from the school to the society under which it was constituted. The claim came to be rejected, the Bench stating as follows:

90. There is another way of looking at the matter. The school being a separate entity, premises occupied by the school will belong to it and not to the society. Therefore, the society cannot claim to be in exclusive occupation and use of the land and building in question. In fact, the proposal for assessment sets out these aspects clearly which are extracted below:

"The first step would be to determine whether the activity in which the society is engaged is charitable or not. The charitable purpose has not been defined in the Act, but it definitely means to include only such acts as relief of the poor, medical relief to the poor and education relief. In P.C. Rajaratnam Institutions v. MCD (Civil Writ Petition No. 1764 of 1979) division bench of the Delhi High Court has held that to be held as charitable institutions for the purpose of Section 115(4), the society must give education relief. It was further held by the Hon'ble Court that where fees are charged, exemption cannot be granted. The scrutiny of the Income and Expenditure account of the school shows that the activity which is being carried out by the society i.e. running of school, generates positive income from year to year. Positive income in the years 1977 to 1987 ranged between 32,000 to Rs.3 lacs per year. I do not know on what criteria this activity can be called as charitable activity. The institute is being run purely on commercial lines for the purposes of profits. Even the society for which receipts and payments accounts have not been filed are in receipt of income generated from this activity in the form of building fund and donations etc.

which are forced on the students and their guardians.

The figures picked up from some of the final accounts of the society show that contributions from the school to the society was Rs.1,56,895 in the year ending 31.3.79, and every year there- after the amount of contribution from school to the society has been increasing. Since the institute is not only self-supporting but also is generating positive income, I hold that the activity carried out by the society is not a charitable activity. The second confusion that the institute/ society should be supported wholly or in part by voluntary contribution is also not fulfilled. The element of voluntary contributions comes only if there is an excess of expenditure over the receipts of the society. Even otherwise the donations received by the society if any cannot be treated as voluntary in view of the fact that they are all forced on the student/parents. The very fact that the tax payer society has claimed depreciation in the income and expenditure account of the school shows that what they are preparing is not the income and expenditure account, but a Profit and Loss Account as is done in commercial establishments. Depreciation is not an expenditure but is only a deduction @ certain percentage of the capital assets for arriving at profits and gains of the business. In view of the foregoing discussions I have no hesitation to decline exemption from payment of general tax in respect of the property known as Green Field School, A-2 Block, S.J.D.A New Delhi. Accordingly, all property taxes are payable by the tax payer."

20. Great reliance is placed by the learned Additional Advocate General on the aforesaid extract to emphasize that the grant of exemption as sought is not automatic. According to the respondent, the earning of profit even in some years would disentitle the petitioner to the exemption sought.

21. A faint attempt was made to say that the impugned order is appealable but since the provisions of Section 366 providing for the filing of a statutory appeal do not cover an order passed by under Section 101, this argument was given up. The maintainability of the writ petition is thus not in question.

22. In Indian Chamber of Commerce Vs. CIT, West Bengal (ii) Calcutta (1976 (1) SCC 324), the phrase 'charitable purpose' which finds place in Sections 2(15) and 11 of the Income Tax Act, 1961 (in short 'IT Act') came to be interpreted, specifically in the context of a profit making entity. This judgment has to be understood in the context of the definition of 'charitable purpose' under the IT Act which, while including the activities of 'relief of the poor', 'education', 'medical relief' and 'the advancement of any other general public utility' qualified the last limb with the caveat that such activity specifically exclude the carrying on of any activity for profit.

23. The petitioners in that case were Chambers of Commerce that had been collecting fees for various activities that promoted the trading interests of the commercial community such as fees for arbitration, fees collected for issuance of certificate of origin and share of profit for issuance of certificates of weighment and measurement and the exemption sought came to be denied. The provisions of Section 11 of the Income Tax Act were amended in 1991 by substitution of sub-section (4A) for the erstwhile provision. Section 11(4A) permits an entity engaged in charity to also be engaged in commercial activity that generates profit, upon condition that separate books of accounts are maintained by the two entities, the one engaged in the charity, and the other in commercial activity. The IT Act thus recognises the concept of 'feeding the charity' in cases where a clear and unambiguous demarcation is made between the accounts and flow of funds inter se the charitable and commercial activities.

24. The Hon'ble Supreme Court in the case of Commissioner of Income Tax Vs. Surat Art Silk Association (121 ITR 2) considered the claim for exemption from income tax, observing at para 16, as follows:

Where an activity is carried on as a matter of advancement of the charitable purpose or for the purpose of carrying out the charitable purpose, it would not be incorrect to say as a matter of plain English grammar that the charitable purpose involves

the carrying on of such activity, but the predominant object of such activity must be subserve the charitable purpose and not to earn profit. The charitable purpose should not be submerged by the profit-making motives; the latter should not masquerade under the guise of the former.

25. In order to, prima facie, examine the flow of funds the petitioner was directed to circulate its financials for the period 2004-05 till date along with income tax assessment orders. An additional affidavit dated 31.08.2020 has been filed on behalf of the petitioner that sets out the details of income and expenditure for the financial years 2004-05 to 2019-20 as follows:

Financial Year	Income	Expenditure
2004-05	Rs.170,632,253	Rs.164,348,671 (+)
2005-06	Rs.169,228,902	Rs.171,562,558
2006-07	Rs.166,595,926	Rs.192,742,981
2007-08	Rs.154,938,741	Rs.174,545,808
2008-09	Rs.171,563,506	Rs.174,897,206
2009-10	Rs.134,541,690	Rs.177,442,946
2010-11	Rs.132,591,915	Rs.180,038,918
2011-12	Rs.199,775,720	Rs.237,854,127
2012-13	Rs.206,968,189	Rs.220,124,130,
2013-14	Rs.193,656,791	Rs.184,545,743 (+)
2014-15	Rs.167,578,733	Rs.173,737,202
2015-16	Rs.182,302,659	Rs.178,930,721 (+)
2016-17	Rs.240,175,573	Rs.186,408,666 (+)
2017-18	Rs.259,683,865	Rs.223,118,973 (+)
2018-19	Rs.222,291,650	Rs.211,695,100 (+)
2019-20	Rs.210,005,706	Rs.222,241,432

26. For the financial years 2004-05, 2013-14, 2015-16, 2017-18 and 2018-19, the petitioner has had an excess of income over expenditure and the respondent would urge that this straight away dis-entitles the petitioner to the exemption sought.

27. The Sanstha manages 32 clinics across the country and the income generated from all clinics is managed at a central location. No doubt, the petitioner has had an excess of income over expenditure for five (5) years. I am however, of the categorical view that the mere fact that a surplus has been generated for some periods would not stand in the way of the entitlement of the petitioner to the exemption sought if it satisfied other parameter and tests to establish its eligibility. This is however the sole, substantial basis upon which the petitioner is denied the benefit of exemption apart from the authority raising certain apprehensions in regard to non-compliance with the directions of the DIT in the order granting exemption from Income tax. Needless to say, the petitioner is required to satisfy the authority that all conditions imposed by the income-tax authorities have been strictly complied with by it.

28. The nature of activity carried on is not denied. There are no allegations in regard to diversion or defalcation of funds or irregularity in the maintenance of accounts. In fact, there does not appear to have been any examination in this regard. One of the clinics run by the petitioner, the Parivar Seva Sanstha, located at Municipal Corporation of Delhi had approached the Delhi High Court with a similar plea as before me, in W.P.(c)No.2212 of 2008 and the claim came to be allowed vide order dated 18.05.2007 by a learned single Judge who took note of the objects and activities of the petitioner clinic also incidentally noting the financial position that there was no surplus of income over expenditure for any of the periods in question. The provisions of Section 115(4) of the Delhi Municipal Corporation Act under which the exemption was sought and granted in that case reads as follows:

Section 115 (4) of the Act reads as under:-

"115 - Premises in which property taxes are to be levied.

(4) Save and otherwise provide in this Act, the General Tax shall be levied in respect of all lands and buildings in Delhi except

(a) lands and buildings or portions of lands and buildings exclusively occupied and used for public worship or by society or body for charitable purposes provided: that such society is supported

wholly or in part by voluntary contribution, applies its profit, if any, or other income in promoting its objections and does not pay any dividend or bonus to its members. "

29. The decision of the learned single Judge was challenged by the Corporation in LPA No.1348 of 2007 and by decision dated 20.02.2009 the order of the learned single Judge was confirmed. The Bench at paragraphs 5 and 6 notes that the operational expenditure was far in excess of the operational income during the relevant years. They also record the submission of the Society in that case to the effect that the petitioner has been generating huge surplus reserves in a systematic manner year after year thereby disentitling it to exemption. The balance sheets of that petitioner for the subsequent years appear to have been relied upon by the respondent therein. However, since that issue did not arise from either the impugned order or from the order of the learned single Judge, the Bench declined to consider the same for the first time at the LPA stage.

30. The petitioner has placed on record its memorandum of association wherein clause IV states that 'any income and property of the society when so ever derived, shall be applied solely towards the promotion of objectives of the society as set forth in this memorandum of association and no portion thereof shall be paid or transferred directly or indirectly by way of dividend, bonus or otherwise howsoever by way of profit to the members of the society'. There are no allegations in regard to the deployment/diversion of funds by the petitioner though, as I have noted earlier, the impugned order does not indicate any examination of this aspect.

31. A perusal of the operative portion of the impugned order extracted at paragraph 8 above will reveal that the respondent has proceeded on the basis that (i) the petitioner is levying and collecting charges for the services rendered (ii) the organization is periodically remitting water/sewage tax/charges to the CMWSSB (iii) that it had not been possible for the respondent to ascertain whether the Memorandum of Association has been updated as per the conditions mentioned by the Director of Income Tax (Exemptions) ('DIT(E)') in order No.DIT(E)2012-13/973 dated 13.08.2012 clause (iii) thereof (iv) that the organization is levying charges contrary to the condition laid down in clause (vii) of the order of the DIT(E) dated 13.08.2012 (v) that the charges for variable amounts for different health services are being collected with receipts

issued without the exemption order cited therein contrary to order of the DIT(E) dated 13.08.2012.

32. As far as point (ii) is concerned, the remittance of water and sewerage charges to the CMWSSB is not an issue in this Writ Petition and cannot, in any event, determine liability or otherwise to property tax. As far as points (iii), (iv) and (v) are concerned, they are questions of fact and it is for the respondent to call for the requisite particulars and satisfy himself with the compliance of those conditions and for the petitioner to comply with the same. It is primarily the first issue that has been decided in this Writ Petition as to whether the levying and collecting of charges for the services and the earning of surplus income for the periods in question would automatically debar the petitioner from the exemption claimed.

33. The grant of exemption to the clinic run by the Sanstha at Defence Colony, New Delhi would also support the position that the activity carried on by the organisation has been accepted to be charitable in nature, subject of course, to the examination of accounts and deployment of surplus earned, if any, for each financial period in question to satisfy the test of pre-dominant activity carried on by the organisation.

34. Though profit earning should not be the dominant object of the institution, there is no bar to it being a mere incident of its operations. To hold that there should be a bar on the earning of profits would only serve to make the institution unviable. The provision for exemption in the Delhi Act specifically provides for this situation in the imposition of the condition that 'such society is supported wholly or in part by voluntary contributions, (and) applies its profits, if any, or other income in promoting its objectives and does not pay any dividend or bonus to its members'. The Madras enactment does not employ the same phrase and extends the exemption to all 'charitable hospitals and dispensaries but not including residential quarters attached thereto'. However, the use of the word 'charitable' would necessitate an examination of established parameters such as the following, among other tests: (i) the activity engaged in by the entity in question (ii) whether such activity is generally understood to fall within the ambit of public service and social good (iii) whether other statutory authorities, including income-tax have recognised the petitioner as being engaged in, and rendering charitable activities (iv) whether the dominant object of the institution is to render service or to earn profit (v) if the activity does generate profit or the institution earns income from other

sources, is such profit/net income ploughed back into the institution or diverted to other avenues/individuals.

35. Prosperity is not the preserve of a commercial institution alone. It is probable, possible and indeed necessary that even charitable organisations including hospitals should be prosperous as increased prosperity will only lead to greater levels of charity and service. The deployment of the profits must however, be a pre-condition to the grant of the exemption. The argument to the effect that the mere existence of profit would debar an institution from claiming exemption, thus, stands rejected. What is necessary is for the respondents to have an appropriate mechanism to test and ensure that such profit if and when earned, is, in fact, utilized to subserve the charitable objectives of that institution.

36. The concept of 'feeding the charity' assumes importance and relevance as unless the institution is well-fed, it will wither and die, and along with it, the activity of charity. This cannot be the intention of the policy makers. It must therefore be the objective of every enactment to ensure that institutions engaged in charity are nurtured, of course, with all protocols in place to prevent abuse/misuse of the exemption granted and the surplus earned, if any. In my view, Section 101 of the Act should be interpreted with this end in mind.

37. In light of conclusion to the effect that the mere fact that that clinic had earned a surplus in some years is not material per se for the grant of exemption, what remains is for the respondent to verify specifically the avenues into which the surplus generated for those has been ploughed. This exercise shall be taken up and completed, with all inputs to be provided by the petitioner, within a period of six weeks from date of receipt of this order. The petitioner shall also satisfy the respondent that all conditions imposed by the income-tax authorities for the grant of exemption from income-tax have also been complied with, scrupulously. The impugned order is set aside to be redone, in the light of the directions as above and this writ petition is allowed. Connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

The Commissioner,
The Corporation of Chennai,
Ripon Buildings,
Chennai 600 003.

+lcc to M/s.P.T.Ramadevi, Advocate Sr.35289

+lcc to M/s.P.B.Ramanujam, Advocate Sr.35103

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