

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 1745 OF 2020

Kasturba Health Society,
through its Secretary, Sewagram,
District: Wardha-442 102

.... **PETITIONER.**

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1. Union of India through its
Secretary, Ministry of Finance,
Shastri Bhavan, New Delhi.
2. The State of Maharashtra, through
its Secretary, Ministry of Finance,
Mantralaya, Mumbai – 32.
3. The Central Board of Indirect Taxes
And Customs, Department of Revenue,
Ministry of Finance, North Block,
New Delhi – 110 001.
4. The Assistant Commissioner,
Goods & Service Tax Division,
Hingna, Nagpur.

.... **RESPONDENTS.**

Shri Anand Parchure, Advocate for Petitioner.
Ms Mugdha Chandurkar, Advocate for Respondent Nos.1 & 3.
Shri A.A.Madiwale, A.G.P for Respondent No.2.
Shri S.N.Bhattad, Advocate for Respondent No.4.

CORAM : **SUNIL B. SHUKRE AND**
 ANIL S. KILOR, JJ.

DATED : **AUGUST 30, 2021**

ORAL JUDGMENT : (Per : Sunil B. Shukre, J.)

1. Heard.

2. **RULE.** Rule made returnable forthwith. Heard finally by consent of the learned counsel for the parties.

3. The petitioner-society is an entity duly registered as a 'Society' under the Societies Registration Act, 1860 and also as a Charitable Institution, duly registered under the Maharashtra Public Trusts Act, 1950.

4. The contention of the society is that it having been formed primarily and predominantly for the purpose of imparting education, it is squarely covered by the category of "educational institution" and therefore, it is exempt from requirement of registration under the Central Goods and Service Tax Act, 2017 and under the Maharashtra Goods and Service Tax Act, 2017 (hereinafter referred to as "the GST Acts"). Further contention of the society is that its exemption from the registration under these Acts would also mean that it would be exempt from the liability of payment of any general service tax on the services that it renders in the field of education.

5. The petitioner-society entertained the aforestated opinion firmly. Nevertheless, the petitioner-society under the provisions of the GST Acts, filed an application for seeking Advance Ruling of the respondent Nos.2 and 4 on the question of its exemption from the requirement of registration and liability to pay service tax. The petitioner-society made following prayer in the application:

“a. In view of the facts and circumstances and also uncontroversial status of law relating to the Applicant Society being “educational institution” having supported by the documents attached herewith, it cannot be labelled as carrying on any business thereby obliging it for registration under the GST Act and further compelling it to comply with the mandatory provisions of GST Act 2017 be shelved.”

6. The application was heard by the Maharashtra Authority for Advance Ruling, Mumbai. The said Advance Ruling Authority framed two questions, which are reproduced as follows:

“(i) Whether the applicant, a Charitable Society having the main object and factually engaged in imparting Medical Education, satisfying all the criteria of “Educational Institution”, can be said to be engaged in the business so as to cast an obligation upon it to comply with the provisions of Central Goods and Service Tax Act, 2017 and Maharashtra Goods and Service Tax Act, 2017 in totality.

ii. Whether the applicant, a Charitable Society having the main object and factually engaged in imparting Medical Education, satisfying all the criteria of “Educational Institution” is liable for registration under the provisions of section 22 of the Central Goods and

Service Tax Act, 2017 and Maharashtra Goods and Service Tax Act, 2017 or it can remain outside the preview of registration in view of the provisions of section 23 of the said act as there is no Taxable supply.”

7. After considering the submissions made by the petitioner-society, the documents filed by the petitioner-society and applying its mind to the record of the proceedings and the provisions of law and also the rulings relied upon by the petitioner-society, the authority, by its ruling dated 4th May 2019 answered the questions to the effect that as Mahatma Gandhi Institute of Medical Sciences (“MGIMS” for short) run by the petitioner-society is the entity which actually imparts education, the petitioner-society could not be termed as “educational institution” and therefore, would not be entitled to seek any exemption from the requirement of registration and tax liability.

8. The Ruling, dated 4th May 2019, was challenged by the petitioner-society before the Appellate Authority by name Maharashtra Appellate Authority for Advance Ruling for Goods and Service Tax. The Appellate Authority upheld the Ruling of the First Authority by its order dated 13th December 2019 giving the same reasons.

9. Shri Parchure, learned counsel for the petitioner-society submits that both these orders, which are questioned here, do not really consider the basic question as to whether or not the petitioner-society on its own strength and without any reference to MGIMS can be considered to be an 'educational institution' and therefore, the Advance Rulings given by both the Authorities below could be said to have been given without applying mind to the basic facts of the case and the questions that have raised by the petitioner-society.

10. Shri Bhattad, learned counsel for respondent No.4 supporting the orders, submits that the discussion made in both the orders would show that there is a consideration given to the issue raised by the petitioner-society and therefore, he submits that there is no need to make any interference in the impugned orders.

11. Ms Mugdha Chandurkar, learned counsel appearing for respondent Nos.1 and 3 and Shri Madiwale, learned A.G.P appearing for respondent No.2 support the argument made by the learned counsel for the respondent No.4.

12. On going through the impugned orders challenged here, we find that these orders do not answer the basic question raised by the petitioner-society. The question raised by the petitioner-society was as to whether or not, the petitioner-society, on its own strength and in its own right, could be said to be entitled to seek exemption from the requirement of registration and also discharge of Goods and Service Tax liability and this is on the ground that the petitioner-society could be considered to be a society having been established with the predominant object of imparting education and therefore, the society would be entitled to have status of an 'educational institution'. This question, of course, has been answered by the first Authority as well as appellate Authority by saying that the petitioner-society could not claim itself to be an 'educational society', but the reason given by both these authorities is not related to the activities or the business, the aims and objects of the petitioner-society. The reason given by both these authorities is that the petitioner-society is not an 'educational institution' because the activity of imparting education is carried on not by the petitioner-society in actual terms, but by its Special Purpose Vehicle-MGIMS. In fact, this factual position is also not denied by the petitioner-society. But, the contention of the petitioner-society is that it has been established primarily for the purpose of imparting of

education and that it does so, through its Special Purpose Vehicle viz. MGIMS. Therefore, to the extent the petitioner-society imparts education through its Special Purpose Vehicle-MGIMS, the society would also be eligible to be termed as 'educational institution' and therefore, entitled for seeking exemption from the requirement of registration and GST liability, is the submission of the society. This contention of the petitioner, as seen from both the orders challenged here, has neither been considered nor has it been answered specifically by these authorities. The authorities ought to have considered this contention independently of the activity of MGIMS and in the light of the manner in which the aims and objects of the society is fulfilled by the petitioner-society. Such exercise having not been done by the authorities below and no findings on these lines having been rendered by both the Authorities, we are of the view that both the orders, as rightly submitted by the learned counsel for the petitioners, are erroneous and cannot stand to the scrutiny of law. The question posed by the petitioner-society in respect of which Advance Ruling was solicited, must be answered specifically by these Authorities.

13. In the result, we pass the following order:

- i) The petition is **allowed**.

- ii) The impugned orders are hereby quashed and set aside.
- iii) The matter is remanded back to the Maharashtra Authority for Advance Ruling, Mumbai for fresh consideration and appropriate decision, in accordance with law, as expeditiously as possible and preferably within three months from the date of appearance of the petitioner before it.
- iv) The petitioner-society shall appear before the Maharashtra Authority for Advance Ruling, Mumbai on 15th September 2021 at 11:00 a.m.
- v) The interim relief given by this Court to the petitioner-society vide order dated 6th July 2020 shall continue till the decision is rendered by the Authorities and also for further period of two weeks from the date of the decision, in case, the decision goes against the petitioner-society.

Rule accordingly. No costs.

(ANIL S. KILOR, J)

(SUNIL B. SHUKRE, J.)

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