IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 29.08.2022

CORAM

THE HONOURABLE MR. JUSTICE R. MAHADEVAN

AND

THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

W.A. Nos.1426 and 1427 of 2021
and C.M.P.Nos.8873 and 8874 of 2021

Sundaram Medical Foundation
Dr.Rangarajan Memorial Hospital
Shanthi Colony, 4th Avenue,
Anna Nagar, Chennai-600 040
Represented by its Trustee and Director of Administration,
T.N.P. Durai. .. Appellant in both appeals

Versus

Chennai Metro Water Supply and Sewerage Board,
Rep. By: Area Engineer – VIII,
227, 2nd Avenue, 12th Main Road,
Anna Nagar, Chennai-600 040. .. Respondent in W.A.No.1426 of 2021

The Commissioner,
Greater Chennai Corporation,
Rippon Buildings, Chennai-600 001. .. Respondent in W.A.No.1427 of 2021

PRAYER in W.A. No.1426 of 2021: Writ Appeal filed under Section 15 of Letter Patent praying to set aside the order dated 26.04.2021 made in W.P.No.20992 of 2018.

PRAYER in W.A. No.1427 of 2021: Writ Appeal filed under Section 15 of Letter Patent praying to set aside the order dated 26.04.2021 made in W.P.No.20993 of 2018.

For Appellant : Mr.Srinath Sridevan

in both W.As. For M/s.T.K.Baskar

For Respondent in W.A.No.1426 of 2021 : Mr.N.Ramesh

For Respondent in W.A.No.1427 of 2021 : Mrs.K.Ashwini Devi

COMMON JUDGMENT

(Judgment of the Court was made by MOHAMMED SHAFFIQ, J.)

These two writ appeals are filed against the order of the learned Single Judge in W.P.Nos.20992 and 20993 of 2018, whereby, the learned Judge has held that the appellant is not entitled to avail the benefit of property tax exemption under Section 101 (e) of Chennai City Municipal Corporation, 1919 (in short "CCMC Act") and the challenge to the consequential demand notice dated 09.08.2018 and the notice of disconnection of water and sewerage dated 09.08.2018 was rejected.

2. The question that arises for consideration is whether the appellant is entitled to the exemption from payment of property tax under Section 101 (e) of the aforesaid Act, in respect of the receipts by the hospital run by the appellant. This is the third round of litigation.

3. It may be necessary to refer to Section 101 (e) of the Chennai City Municipal Corporation Act, 1919 (in short 'Act') under which the exemption was sought for by the appellant and the same reads as under:-

> *"101. General exemptions.- The following buildings and lands shall be exempt from the property tax :-- (a) [places] set apart for public worship and either actually so used or used for no other purposes;*
>
> *(b). Choultries for the occupation of which no rent is charges and choultries the rent charges for the occupation of which is used exclusively for charitable purposes ;*
>
> *(c) places used for the charitable purpose of sheltering the destitute or animals and orphanages, homes and schools for the deaf and dumb, asylum for the aged and fallen women and such similar institutions run purely on philanthropic lines as are approved by the council ;*
>
> *(d) such ancient monuments protected under the Ancient Monuments Preservation Act, 1904 (Central Act VII of 1904 (Central Act VII of 1904), or parts thereof as are not used as residential quarters or public offices ;*
>
> *(e) <u>charitable hospitals and dispensaries but not including residential quarters attached thereto ;</u>*
>
> *(f) such hospitals and dispensaries maintained by railway administrations as may from time to time be notified by the 2 [State Government], but not including residential quarters attached thereto ;*
>
> *(g) burial and burning grounds included in the list published by the commissioner under section 321 (3) of this Act ;*
>
> *(h) the bed of the Cooum, the bed of the Adyar, the Buckingham canal, 4 [5 (Government lands) set apart free for recreation purposes] 6 [and all such other 7 [Government property] (being neither buildings not land from which in the*

> *opinion of 8 [the State Government] and income could be derived) as may from time to time be notified by the 2 [State Government] 1*
>
> *Provided that 2 [the Government] 3 [does] not any income from such beds] ; and 4 (i) any building or land the annual value of which is less than thirty-six rupees provided that the owner thereof is not liable to profession tax or income-tax and provided further that no other building or land is owned buy him or the aggregate annual value of all the buildings and lands owned by him is less than thirty-six rupees:*
>
> *Provided that nothing contained in clauses (a), (c) and (e) shall be deemed to exempt from property tax any building or land for which rent is payable by the person or person using the same for the purposes referred to in the said clauses."*

A reading of the above provision would show that certain class of buildings and land is exempt from property tax, which includes "charitable hospitals and dispensaries but not including residential quarters attached thereto." The expressions "charitable" or "charitable hospital" has not been defined under the Act, it may thus be necessary to understand the scope of the above expressions bearing in mind the overall scheme of the Act and the object behind the grant of exemption.

The primary reasons which weighed in the mind of the Learned Judge while denying the exemption were the following:-

(A). Reliance was placed on the official website of the appellant's foundation and an inference was drawn therefrom by the learned Single Judge that free access to the poor, needy and deserving patients are either restricted or denied to the medical facilities/treatment. Further the Vision declared in the website was only to provide quality healthcare which is cost effective in community centre. The learned Judge was of the view that in the absence of free access to the poor, needy and deserving patients one cannot come to the conclusion that the appellant is a charitable hospital within the meaning of Section 101 (e) of the CCMC Act.

(B). Reliance was also sought to be placed on a third party website called www.medifee.com from where the medical charges collected by the appellant company was found to be exorbitant and thus indicative of the fact that the appellant was not a charitable hospital.

(C). The reliance placed by the appellant on G.O.Ms.No.460 dated 10.04.1992 whereby the petitioner was allotted land free of cost for the purpose of setting up hospital/ free medical services subject to the condition that the petitioner would provide free treatment to 25 percent of the patients which was later reduced to 15 percent was turned down by the learned Judge on the premise that the above Government Order was relevant only for the purpose of retaining the land allotted and may not have any bearing in deciding the claim of exemption from property tax under Section 101 (e) of the Act.

(D).The learned Judge found on the basis of the statistics provided that the appellant had provided free medical services only up to 24 percent though the same is in excess of 15 percent prescribed in the aforesaid G.O.Ms.No.460, that by itself may not render the appellant eligible to claim exemption under Section 101 (e) of the said Act. It was further held that the petitioner as a matter of fact had been paying these taxes initially and resisted the same only after there was an enhancement. Thus the petitioner must be understood to have waived/acquiesced and thus it may not be open for the appellants to claim the exemption or challenge its denial.

(E). Reliance was also sought to be placed by the learned Judge on an alleged inspection conducted by the Corporation Officials and their observation/finding that no free access was given to the poor/needy and the charges collected are competitive and on the higher side.

(F). That the activities of the appellant were also found by the learned Judge to be not in keeping with or in consonance with the declared objective in the trust deed inasmuch as while the trust deed declares that medical services were to be provided free of cost or at concessional rate, however, the above objective is not fulfilled and therefore the claim of exemption is liable to be rejected.

4. The above order of the learned Single Judge is challenged by the appellant *inter alia* on the following grounds:-

(i). That the order of the learned Single Judge is on the basis of material which did not form part of the pleading nor the case of the respondent, in particular the finding of the learned Judge that the respondent had conducted an inspection whereby, the appellant was found to have collected medical charges on par with private hospitals running with profit motive. The above finding is contrary to facts inasmuch as no such inspection was carried out nor was there any pleading to the said effect.

(ii). That the finding of the learned Single Judge that the appellants were charging exorbitant amounts is not even pleaded by the respondent and is based on a third party website, which the appellant was not put on proper notice. The improvement of the order of rejection of the claim of exemption by the learned Judge is impermissible and contrary to the law laid down by the Supreme Court in the case of ***Mohinder Singh Gill and another Vs. the Chief Election Commissioner, New Delhi and others*** reported in ***AIR 1978 SC 851***.

(iii). That the learned Judge had misdirected himself in rejecting the claim for exemption on the premise that free access to the poor and needy was not being granted and the functioning of the appellant was contrary to the objects set out in the trust deed which was without any basis and not borne out of record.

(iv). That the learned Judge misdirected itself in finding out whether the appellant was a charitable hospital by applying the test of pre-dominance or being wholly charitable.

5. We find that the claim to exemption by the petitioner from the levy of property tax is premised primarily on the basis that though admittedly only 15 to 25 % of the patients are provided free medical aid however the amounts charged from the remaining 85% to 75% is ploughed back so as to make available modern, efficient and State of the Art medical facilities available. There is no element of private gain, the profits if any are not distributed amongst its members and therefore it must be treated as entitled to exemption under Section 101 (e) of the Chennai City Municipal Corporation Act.

6. Heard both sides. Perused the materials on record.

7. We find that there is merit in the submission that the order of the learned Single Judge is erroneous, inasmuch as reliance was placed on the 3rd party website which was not disclosed to the appellant. The learned Judge proceeds to refer to an inspection, which admittedly never took place. The learned Judge has traversed even beyond the case set-up by the respondent while stating that the appellant has been charging exorbitant rates.

8. It was submitted by both the learned counsel for the appellant and the Respondents that the matter may be remitted back for denovo consideration of the appellant's claim of exemption in terms of Section 101(e) of the Act. It was further submitted that the Government while allotting the land free of cost had only fixed/required the appellant to provide free medical services to 15% of the patients. In the circumstances, there may be need for the executive to clarify on the issue if satisfaction of the above condition would entitle the appellant to claim the benefit of exemption in terms of Section 101(e) of CCMC Act.

9. Though we are conscious that the Court's power of Judicial review is wide but it does not encompass the power to direct the legislature/executive to frame a legislation or Rule or Regulation with a view to clear the ambiguity in the existing provisions. However, we would think that it is desirable for the executive to clarify the nature and the scope of exemption granted under Section 101 (e) of the Chennai City Municipal Corporation Act, 1919 (in short 'Act') for it is not uncommon for the executive to issue instructions to clarify the provision that may seem obscure or vague. We say this also in view of the submissions by both the Counsel for the Respondents and the appellant set out above.

10. In view of the above we set aside the order of the learned Single Judge and the impugned order. The matter is remanded back to the Respondents for examining the appellant's claim afresh for exemption as a charitable hospital

within the meaning of Section 101(e) of CCMC Act. The concerned authority may also issue appropriate guidelines as to the scope and nature of the exemption granted in terms of Section 101 (e) of the Act. Liberty is granted to the Respondents to deal with the appellant's claim of exemption denovo for the disputed period.

11. In the result, the writ appeals are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

[R.M.D., J.] **[M.S.Q., J.]**
29.08.2022

Index : Yes/No
Speaking/Non-Speaking Order
nst/ lm

To:

1.Area Engineer – VIII,
Chennai Metro Water Supply and Sewerage Board,
227, 2nd Avenue, 12th Main Road,
Anna Nagar, Chennai-600 040.

2.The Commissioner,
Greater Chennai Corporation,
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