IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4275 OF 2021
WITH
INTERIM APPLICATION NO.731 OF 2021
IN
WRIT PETITION NO.4275 OF 2021

Swami Sevabhavi Sanstha .. Petitioner

Vs.

The State of Maharashtra & Ors. .. Respondents

- Mr. Shrirang Katneshwarkar i/b. Mr. Anand P. Bhandari for the Petitioner.
- Mr. Rohit Sachdeo for Respondent Nos.2 & 3-Corporation.
- Ms. M.P. Thakur, AGP for Respondent No.1-State.

CORAM : A. S. CHANDURKAR &
M.W. CHANDWANI, JJ.

DATE : 8TH FEBRUARY, 2023.

ORAL JUDGMENT : [Per A.S. Chandurkar, J.]

1. Rule. Rule made returnable forthwith.

2. Heard learned counsel for the respective parties.

3. The petitioner is a Public Trust registered under the provisions of the Maharashtra Public Trust Act, 1950. Amongst its activities, it is claimed that the Public Trust runs an Educational Institution, which is located within the jurisdiction of the Respondent No.2–Pimpri Chinchwad Municipal Corporation. A certificate under Section 80G of the Income Tax Act, 1961 has been issued in favour of the petitioner. It is the case of the petitioner that since its activities have the character of "Public Charitable Purposes", it is entitled to exemption from payment of general tax under Section 132(2)(b) of the Maharashtra Municipal Corporation Act, 1949. It accordingly moved applications dated 4th January 2018 and 29.01.2018 seeking such exemption. By the communication dated 15.02.2018, the Administrative Officer of the Municipal Corporation informed the petitioner that since the documents submitted by it did not indicate any such activities within the limits of the Municipal Corporation, the exemption sought cannot be granted. Being aggrieved, the petitioner has challenged the aforesaid communication and seeks a declaration that it is entitled to exemption from payment of general tax.

4. Learned counsel for the petitioner submits that considering the various documents that were submitted to the Municipal Corporation

including documents indicating "Public Charitable Activities" being carried out by the petitioner, it was entitled for exemption from payment of general tax. The only reason given in the impugned communication was that the said documents pertain to the area that was beyond the limits of the Municipal Corporation. Subsequently, the petitioner had submitted additional documents along with its communication dated 31.12.2018 and 27.03.2019. The same would indicate that the petitioner was entitled to such exemption. Notwithstanding that, a fresh demand was being made by the Municipal Corporation. Steps were also taken to seal the premises of the petitioner. Placing reliance on the decision of the Hon'ble Supreme Court in ***Municipal Corporation of Delhi Vs. Children Book Trust***[1] as well as the judgment dated 17.10.2022 passed in Writ petition No.4383 of 2021 by this Court (Nagpur Bench) (Jyoti Shikshan Prasarak Mandal, Akola Vs. State of Maharashtra, Through its Secretary, Urban Development Department, Mantralaya, Mumbai – 32 & Anr.)., it is submitted that the impugned communication was liable to be set aside and the exemption as sought ought to be granted.

5. Learned counsel for the Municipal Corporation opposed the aforesaid

1 (1992) 3 SCC 390

submissions. According to him, the documents filed by the petitioner did not indicate that its activities had the character of any charitable service. Those documents related to activities of the petitioner that were carried out beyond the limits of the Municipal Corporation. Since the Educational Institution was charging tuition fees, it was not entitled to any exemption whatsoever. It was submitted that there was no reason to interfere with the impugned order.

6. We have heard the learned counsel for the parties and we have also perused the documents on record.

7. It is not in dispute that the petitioner has been registered under the provisions of the Maharashtra Public Trust Acts, 1950 and claims to be engaged in Public Charitable Activities. It has been issued exemption under Section 80G of the Income Tax Act, 1961. It intends to seek exemption under Section 132(1)(b) of the Act of 1949. The Hon'ble Supreme Court in *Children Book Trust (supra)* has laid down various tests for ascertaining whether the activities in question carried out by an entity which seeks exemption is profit making or charitable. For this purpose, it has been observed that it would be necessary to consider all relevant

factors in that regard. Following the said decision, this Court in *Jyoti Shikshan Prasarak Mandal, Akola (supra)* has permitted such entities to place before the Municipal Corporation all relevant documents including balance-sheets as well as bye-laws of the Public Trust to enable the Municipal Corporation to consider and take a decision whether general tax can be demanded from such entity.

The impugned communication no doubt states that the documents filed by the petitioner were in relation to activities beyond the jurisdiction of the Municipal Corporation. However, subsequently the petitioner has made representations dated 31.12.2018 and 27.03.2019 for consideration. In this backdrop, we find that the interest of justice would be served by directing the Municipal Corporation to consider the case of the petitioner for grant of exemption from payment of general tax by examining all relevant documents after giving due opportunity to the petitioner. In that regard, the following directions would meet the ends of justice.

(i) The demand of general tax as made from the petitioner-Trust shall not be enforced until the Municipal Corporation considers the representation/reply submitted by the petitioner-Trust based on the judgment in Children Book Trust (supra) to determine the liability of the Trust to pay general tax.

(ii) The Municipal Corporation is free to issue fresh show cause notice to the Trust demanding general tax and grant an opportunity to the Trust to put forth its stand in accordance with law. After considering all relevant documents including balance-sheets and bye-laws of the Trust, the Municipal Corporation would be free to take a decision with regard to the liability of the Public Trust to pay general tax. To that extent, the impugned demand notice issued to the petitioner-Trust demanding general tax shall not be enforced til such decision is taken by the Municipal Corporation.

(iii) The petitioner is free to respond to the show cause notice, if issued by the Municipal Corporation by filing additional reply if necessary.

(iv) It is clarified that insofar as demand of other taxes is concerned, it is open for the Municipal Corporation to enforce such demand and the petitioner would be free to avail the statutory remedy provided under the Act of 1949 if it is aggrieved by such demand. Insofar as the demand for property tax that has already been made to the petitioner, it is directed that subject to outcome of the aforesaid exercise, the petitioner shall pay 50% of the amount as demanded within a period of three weeks from today. The amount already paid shall be taken into consideration in that regard. If 50% of the amount of arrears is deposited, no coercive steps shall be taken by the Municipal Corporation to enforce the demand. It is clarified that this interim arrangement is without prejudice to the rights and contentions of either parties and the said arrangement is subject to final decision of the Municipal Corporation in the matter of grant of exemption from payment of general tax.

(v) The entire exercise be completed within a period of three months from today on its own merits and in accordance with law.

8. In the light of aforesaid directions, the Writ Petition is disposed of. The Interim Application is also disposed of in terms of the final order. Rule is made absolute with no order as to costs.

[M.W. CHANDWANI, J.] **[A. S. CHANDURKAR, J.]**