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W.P.No.27030 of 2023 etc., (batch cases)

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.04.2024

CORAM :

**THE HON'BLE MR.SANJAY V.GANGAPURWALA ,
CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY**

W.P.Nos.27030, 27041, 27042, 27034, 27048, 27051 of 2023; 3248 and
3250 of 2024

In W.P.No.27030 of 2023 :

Sri Nrisimha Priya Charitable Trust
Represented by its Trustee,
Rangamani Rajan

.. Petitioner

Versus

1. Central Board of Direct Taxes,
Represented by its Director,
Ministry of Finance,
North Block, New Delhi - 110 001.

2. Commissioner of Income Tax (Exemptions),
Income Tax Department,
No.121, M.G.Road, Nungambakkam,
Chennai - 600 034.

.. Respondents

Prayer in W.P.No.27030 of 2023 : Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of declaration to declare Clause 5(ii) of the Circular No.6 of 2023 bearing F.No.370133/06/2023-TPL, dated 24.05.2023 issued by the 1st respondent insofar as it fails to extend the due



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date for making applications for approval under clause (iii) of the first proviso to sub-section (5) of Section 80G of the Income Tax Act, 1961 as illegitimate, arbitrary, and *ultra vires* the Constitution of India.

In W.P.Nos.27030, 27041, 27042, 27034, 27048, 27051 of 2023 :

For Petitioner : Mr.Suhrith Parthasarathy

For Respondents : Mr.AR.L.Sundaresan,
Additional Solicitor General of India,
Asst. by Mr.V.Mahalingam,
Senior Panel Counsel for R1

In W.P.Nos.3248 and 3250 of 2024 :

For Petitioner : Mr.R.Vijayaraghavan
for M/s.Subbaraya Aiyar Padmanabhan
and Ramamani

For Respondents : Mr.AR.L.Sundaresan,
Additional Solicitor General of India,
Asst. by Mr.V.Mahalingam,
Senior Panel Counsel for R1

COMMON ORDER

(Order made by the Hon'ble Mr Justice D.Bharatha Chakravarthy)

A. The Writ Petition:

These writ petitioners are trustees representing their respective charitable trusts. Since the reliefs claimed by them are identical and common, these Writ Petitions were heard together, and disposed of by this common order.



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B. The Factual Matrix:

2. The following facts in W.P.No.27030 of 2023 are adverted to illustrate the factual background :-

2.1. The petitioner trust was established on 09.09.2021 and is allotted a Permanent Account Number under the *Income-Tax Act*, 1961 (from now on referred to as 'the *Act*'). The trust is formed with charitable and educational goals. The petitioner had to apply for a provisional registration/approval under the *Act* as per the *Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act*, 2020 which amended the provisions relating to the application for the registration. As per the said *Act*, the first and second proviso to Section 10(23C), Section 12A(1)(ac) and the first and second proviso to Section 80G(5) of the *Act* were amended. The amended provisions *inter alia* provide the following:-

" a) New trusts or institutions need to apply for the provisional registration/approval at least one month prior to the commencement of the previous year relevant to the assessment year from which the said registration/approval is sought. Such provisional registration/approval shall be valid for a period of 3 years.

b) Provisionally registered/approved trusts or institutions will again need to apply for regular registration/approval at least six months prior to expiry of



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period of the provisional registration/approval or within six months of the commencement of activities, whichever is earlier. Regular registration/approval shall be valid for a period of 5 years.

c) The trusts and institutions will need to apply at least six months prior to the expiry of regular registration/approval."

2.2. As per the said requirement, the petitioner applied for provisional approval in Form No.10A to the second respondent seeking approval under clause (iv) of the first proviso to sub-section 5 of Section 80G of the *Act* on 25.09.2021. The petitioner was granted provisional approval on 06.10.2021. In the meanwhile, the petitioner commenced its activities from 09.09.2021 and therefore, had to apply for regular approval/registration in Form No.10AB within six months from the date of commencement i.e., within six months from 09.09.2021.

2.3. While so, considering the difficulties faced by the assesses in electronically filing Form No.10AB, the first respondent namely, the Central Board of Direct Taxes, issued Circular No.8 of 2022, dated 21.03.2022, thereby, extending the date for filing applications for regular registration/approval till 30.09.2022. The time extension was granted in



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respect of the existing trusts and the new trusts for registrations under Sections 10(23C), 12A and 80G(5) of the *Act*.

2.4. Even within the extended time, the petitioner did not file Form No.10AB and applied only on 22.03.2023. While so, considering the representations received from various trusts and institutions whose applications were rejected as beyond the time limit, to mitigate the genuine hardship faced by them, the first respondent issued Circular No.6 of 2023, dated 24.05.2023 once again extending the time limit granted. It is essential to extract the relevant portion of the circular which reads as follows:-

" 5. In order to mitigate genuine hardship in such cases, the Board, in exercise of the power granted under section 119 of the Act, extends the due date of making application in,-

(i) Form No. 10A, in case of an application under clause (i) of the proviso to clause (23C) of section 10 or under sub-clause (i) of clause (ac) of sub-section (1) of section 12A or under clause (i) of the first proviso to sub-section (5) of section 80G of the Act, till 30.09.2023 where the due date for making such application has expired prior to such date;

(ii) Form No. 10AB, in case of an application under clause (iii) of the first proviso to clause (23C) of section 10 or under sub-clause (iii) of clause (ac) of sub-section (1) of section 12A of the Act, till 30.09.2023 where the due date for making such application has expired prior to such date."



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2.5. Thus, it can be seen that while extending further time, (a) in respect of the existing trusts, time was extended both in respect of proviso to clause (23C) of Section 10 or under sub-clause (i) of clause(ac) of sub-section (1) of Section 12A or under clause (i) of the first proviso to sub-section (5) of Section 80G of the *Act* till 30.09.2023; (b) While the same extension is granted to the new trusts also in respect of the first proviso to clause (23C) of Section 10 or under sub-clause (iii) of clause (ac) of sub-section (1) of Section 12A, the time extension is not granted in respect of the first proviso to sub-section (5) of Section 80G of the *Act*.

2.6. Therefore, the petitioner's application in respect of approval for the benefit under Section 80G(5) of the *Act* will not be considered as within the time. Therefore, the petitioners' trust has come up with the present Writ Petitions for declaration declaring the aforementioned clause 5(ii) of the Circular No.6 of 2023, dated 24.05.2023 insofar as it fails to extend the due date for making an application for approval under clause (iii) of the first proviso to sub-section 5 of Section 80G of the *Act* as arbitrary and *ultra vires* the Constitution of India.



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2.7. The writ petitioners contend that the impugned circular is discriminatory. Once the respondents decided to grant further time, extending in respect of the existing trusts alone in respect of both limbs and not in respect of the new trusts in respect of Section 80G would be violative of Article 14 of the Constitution of India. In the absence of approval under Section 80G, donors may not come forward, which ultimately would spell doom for the very existence of the petitioner trusts. No reason is given and the decision is irrational.

C. The Counter :

3. The Writ Petitions are resisted by the respondents by filing a counter-affidavit. It is stated that the original date of filing was extended till 30.09.2022 to grant an opportunity. The petitioner trusts ought to have filed their Form No.10AB well within time or at least within the extended time. However, considering various hardships, the time was further extended up to 30.09.2023. While granting further extension for the second time, in respect of the new trusts, time was extended only in respect of registrations under Sections 10(23C), 12A of the *Act* and not for approvals under clause (iii) of the first proviso to Section 80G(5) of the *Act*. While extending the



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time, no extension was provided for approval under Section 80G(5) of the *Act* for the institutions that are provisionally approved under the said Section.

3.1. There are reasons for making the distinction. The same are mentioned in paragraph No.12 of the counter-affidavit which reads as follows:-

"The reason for making the above distinction is because approval under clause (i) of the first proviso to section 80G(5) may be applied by existing funds or institutions, by making an application in Form No.10A while applying for registration/approval in Form No. 10A under clause (i) of the first proviso of section 10(23C) or sub-clause (i) of section 12A(1)(ac). Hence, funds or institutions which take benefit of the extension of the due dates for filing Form No. 10A under the first regime or the second regime, were also allowed to make an application for approval u/s 80G(5) (beyond the due date) so that the donations received by them are also eligible for deduction under section 80G.

However, the requirement for new funds or institutions to seek approval by making an application in Form No. 10AB (as it stood prior to amendment by Finance Act 2023) arise only when such funds or institutions were provisionally approved u/s 80G(5) and had been granted approval in Form No. 10AC, or the approval to such funds or institutions is due to expire. Such funds or institutions were required to seek approval u/s 80G(5) by making application in Form No. 10AB within the due date (i.e. 30.09.2022). Further, the amendments made to section 115TD of the Act by Finance Act, 2023 do not directly or indirectly impact such funds or institutions.

Hence, there is a difference between the existing funds or institutions which were required to seek approval under clause (i) of the first proviso to section 80G(5) vis-a-vis



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the funds or institutions which were provisionally approved under section 80G(5) and required to seek approval by making an application in Form No. 10AB within the due date. The distinction made is reasonable and has a rational nexus with the object sought to be achieved. The two are a different class. Further, grant of exemption and extension of time are not a matter of right."

3.2. It submitted that petitioners did not have any vested right to claim for an extension of time having failed to apply within the period. In the absence of any right to the petitioner trusts, the decision of the respondents not to extend time in respect of Section 80G of the *Act* cannot be questioned.

3.3. When the matter was being heard, we expressed our mind as to whether Section 80G of the *Act* was omitted by way of a conscious decision or whether it could have even been a typographical omission to leave out the sentence alone considering the wordings of the first circular granting extension for both the existing and new trusts and the wordings of the second impugned circular. *Mr.AR.L.Sundaresan*, learned Additional Solicitor General of India sought time to place the decision taken by the respondents by filing an additional counter-affidavit and accordingly, by the order, dated 19.02.2024, we granted further time for filing an additional



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counter-affidavit. Accordingly, an additional counter-affidavit, dated 06.03.2024 is also filed.

3.4. The additional counter-affidavit only reiterates that the petitioner trusts were bound to apply within time and that they cannot seek for extension of time as a matter of right. It again reiterates that in respect of the old trusts, time was extended for both matters, while, in respect of the new trusts having provisional approval, time is not extended in respect of Section 80G of the *Act*. It does not reveal any conscious decision which was taken by way of application of mind at the time of issuance of the impugned Circular No.6 of 2023 or any time before.

D. The Submissions:

4. We have heard *Mr Suhrith Parthasarathy*, learned Counsel for the petitioners in W.P.Nos.27030, 27041, 27042, 27034, 27048, 27051 of 2023 and *Mr.A.R.L.Sundaresan*, learned Additional Solicitor General of India for the respondents in all the cases.



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4.1. *Mr.Suhrith Parthasarathy*, learned Counsel for the petitioners in the said petitions would submit that the only question which was before the respondents was the hardship faced by the trusts in digital filing of the respective forms. While considering the same, an extension has been given both in respect of the existing as well as the new trusts on the first occasion and when the respondents thought it fit to extend the same for the second time up to 30.09.2023, there is no rationale in leaving out the provisions in respect of Section 80G of the *Act* alone in respect of the new trusts. The said classification does not in any manner relate to the object sought to be achieved and as such, there is no intelligible differentia in making a distinction between existing and new trusts. Therefore, the impugned subordinate legislation is liable to be struck down as arbitrary and violative of Article 14 of the Constitution of India.

4.2. He also submits that once the respondents choose to extend the time, then, there is a vested right on the part of the petitioner trusts and their very existence is put into jeopardy since the donors will not get an exemption under Section 80G of the *Act* in the absence of approval and therefore, would submit that the impugned legislation is illegal. In support



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of his submissions, the learned Counsel would rely upon the judgment of the Hon'ble Supreme Court of India in *Association of Old Settlers of Sikkim and Ors. Vs. Union of India*¹, more specifically relying upon paragraphs Nos.32, 39 and 40 of the judgment to contend that the classification made by the respondents is not reasonable and there is no nexus with the object sought to be achieved and by excluding the new trusts in the matter of grant of approval under Section 80G of the *Act*, the respondents have discriminated among similarly placed persons.

4.3. *Mr.AR.L.Sundaresan*, learned Additional Solicitor General of India for the respondents would submit that the petitioner trusts should have applied in time or within the first extension which was granted. It is their fault for not applying within the time. The grant of very extension itself is an act of benevolence shown by the first respondent and that will not in any manner create any right on the part of the petitioner trusts. The distinction is made between the two classes of trusts namely, the existing trusts (old trusts) and the new trusts. Such differentiation can be made between the two classes of trusts and such a classification would be permissible.

¹ (2023) 5 SCC 717



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4.4. The learned Additional Solicitor General of India would rely upon the following judgments in support of his proposition that the classification made by the respondents is a reasonable classification and hence, it is legal:-

S.No.	Judgments	Citations
1.	Babulal Amthalal Mehta Vs. Collector of Customs, Calcutta and Ors.	<i>1957 SCR 1110 : AIR 1957 SC 877</i>
2.	Shashikant Laxman Kale and Anr. Vs. Union of India and Anr.	<i>(1990) 4 SCC 366</i>
3.	ITC Bhadrachalam Paper Boards Ltd., Vs. Collector of Central Excise, Hyderabad	<i>1994 Supp (2) SCC 322</i>
4.	Union of India and Ors. Vs. K.G.Radhakrishana Panickar and Ors.	<i>(1998) 5 SCC 111</i>
5.	Transport and Dock Workers Union and Ors. Vs. Mumbai Port Trust and Anr.	<i>(2011) 2 SCC 575</i>

4.5. The learned Additional Solicitor General of India, by relying upon the following judgments, would also contend that the matter of concession shown by the respondents by extending the time can never give rise to any concomitant right on the part of the petitioners to claim further extension:-

S.No.	Judgments	Citations
1.	Ald Automotive Private Limited Vs. Commercial Tax Officer now upgraded as Assistant Commissioner (CT) and Ors.	<i>(2019) 13 SCC 225</i>
2.	Union of India and Ors. Vs. Cosmo Films Limited	<i>(2023) 9 SCC 244</i>



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3.	LG Electronics India Pvt. Ltd. Vs. State of Tamil Nadu and Anr.	(2023) 114 GSTR 197
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4.6. The learned Additional Solicitor General of India, by further advertng to the judgment of the Hon'ble Supreme Court of India referred by the learned Counsel for the petitioners in *Association of Old Settlers of Sikkim* (cited *supra*) would contend that in the said case, relief was granted by the Hon'ble Supreme Court of India in exercise of its powers under the Article 142 of the Constitution of India and such relief cannot be granted by this Court.

E. The Point for Consideration:

5. We have considered the rival submissions made on either side and perused the material records of the case. Upon consideration of the submissions made, the following two questions arise for consideration in these cases:-

Whether or not the classification made by the respondents in the matter of grant of extension of time between the existing and new trusts and to apply for approval in respect of clause (i) of the first proviso to sub-section (5) of section 80G of the Act is reasonable?



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F. The Discussion and Findings :

6. At the outset, we agree with the learned Additional Solicitor General of India that the petitioner trusts do not have any vested right to claim an extension of time. When the statute prescribes a time limit, the petitioner trusts are expected to apply within the said date to avail the benefits. The first respondent Board issues circulars enlarging the time limit even beyond the prescribed limit to mitigate the rigours of the statute and the hardship faced by the assesseees. The same is in exercise of its powers under Section 119(2)(b) of the *Act*.

6.1. No discrimination or differentiation was made between the existing trusts and the new trusts at the first instance when Circular No.8 of 2022 was issued. When the impugned Circular No.6 of 2023 was issued, the reason stated by the first respondent was to mitigate genuine hardship. Paragraph No.5 was already extracted above. It is also essential to extract paragraph No.4 of the impugned Circular which reads as follows:-

" 4. Representations have been received stating that several trusts have not been able to apply for registration/ approval within the required time due to genuine hardship. This has also led to rejection of applications simply on the ground that these were delayed.



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As mentioned in para 1(a) above, the last date for filing an application by the existing trusts seeking registration/approval was extended to 25.11.2022 vide Circular No. 22 of 2022 dated 01.11.2022. Further, as stated in 1(c) above, the due date for furnishing application for registration/approval by the provisionally registered/approved trusts was extended till 30.09.2022. These trusts shall be subject to tax under section 115TD of the Act in accordance with the provisions of the said section, as amended by the Finance Act, 2023 if the application is not made by 25.11.2022 or 30.09.2022, as the case may be."

(emphasis supplied)

6.2. Thus, on a combined reading of the earlier Circular No.8 of 2022 and the impugned Circular No.6 of 2023, it can be clear that the only reason which is shown for the exercise of the powers is that these trusts faced hardship since they could not apply on time. No reason whatsoever is mentioned to omit "*the clause (i) of the first proviso to sub-section (5) of Section 80G of the Act*" in respect of the new trusts applying under Form No.10AB alone.

6.3. Even though the counter-affidavit attempted to furnish reasons for making the above distinction, ultimately, no reason for leaving out clause (i) of the first proviso to Section 80G5 in respect of the new trusts is given. The relevant paragraph No.12 was extracted above. It only reiterates the eligibility of deduction and to the amendments made to



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Section 115TD of the *Finance Act, 2023*. Thus, while we agree with the contention of the learned Additional Solicitor General of India that it is well within the powers of the first respondent Board to extend time, and it would also be well within the power of the first respondent Board to make any classification between the trusts, ultimately, we could not find any reason whatsoever in leaving out the new trusts in respect of approval under Section 80G alone.

6.4. As a matter of fact, we entertained a doubt as to whether it was a conscious decision at all taken in the first place or an inadvertent omission of a sentence while drafting the impugned Circular No.6 of 2023. Though the respondents filed an additional counter-affidavit, no particulars as to the decision being taken between any date after the issue of the earlier Circular No.8 of 2022 and before or at the time the impugned Circular No.6 of 2023 is mentioned or placed on record. The impugned circular by itself also does not contain any reason whatsoever for making the classification.

6.5. The counter-affidavit filed also actually does not contain any reason whatsoever. Except for reiterating that the petitioner trusts do not



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have any vested right, there is no other ground that is put forth by the first respondent. Even though the new trusts as well as the existing trusts have no right to demand for extension of time as a matter of right, when the respondents have thought it fit to extend the time, considering the hardship, there is no material which is placed before this Court nor any reasoning is contained in the impugned order that the new trusts did not face the hardship in respect of filing of the application under Section 80G5 of the *Act* alone. Therefore, leaving out the clause in respect of Section 80G5 of the *Act* alone that too only in respect of the new trusts does not in any manner relate to the object sought to be achieved by the impugned circular nor does it provide any basis for the discrimination/classification. Useful reference as to the restatement of the law in this regard can be made to the Judgment of the Hon'ble Supreme Court of India in ***State of Tamilnadu & Anr. Vs. National South Indian River Interlinking Agriculturist Association***², more particularly to paragraph Nos.15 – 15.2 which reads thus:

" 15. The equality code in Article 14 of the Indian Constitution prescribes substantive and not formal equality. It is now a settled position that classification per se is not discriminatory and violative of Article 14. Article 14 only forbids class legislation and not reasonable classification. A classification is reasonable, when the

² (2021) 15 SCC 534



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twin tests as laid down by S.R. Das, J. in **State of W.B. v. Anwar Ali Sarkar** [**State of W.B. v. Anwar Ali Sarkar, (1952) 1 SCC 1 : 1952 SCR 284**] are fulfilled:

15.1. The classification must be based on an intelligible differentia which distinguishes persons or things that are grouped, from others left out of the group.

15.2. The differentia must have a rational relationship to the object sought to be achieved by the statute."

6.6. In the instant case, the differential treatment is not based on any substantial distinction that is real and pertinent to the object of the circular. The discrimination is artificial. The respondents are evasive and could not provide any rationale for such a classification. Accordingly, we hold that the impugned clause (ii) of the Circular, dated 24.05.2023 is arbitrary and violative of Article 14 of the Constitution of India and accordingly, would be *ultra vires* the Constitution.

6.7. Because we find that clause (ii) of the impugned circular is unconstitutional, we direct the first respondent to consider the applications of the petitioners as to the recognition/approval in respect of clause (i) of the first proviso to sub-section (5) of section 80G of the *Act* as within time and consider the same and pass orders thereon on merits as per law.



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G. The Result :

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7. In the result, these Writ Petitions are allowed on the following terms:-

(i) The clause 5(ii) of Circular No.6 of 2023 bearing F.No.370133/06/2023-TPL, dated 24.05.2023 of the first respondent is declared as illegitimate, arbitrary, and *ultra vires* the Constitution of India;

(ii) The respondents are directed to consider the applications submitted by the petitioners as to the recognition/approval in respect of clause (i) of the first proviso to sub-section (5) of section 80G of the Act as within time and consider the same and pass orders thereon on merits, in accordance with law within six months from the date of receipt of a copy of this order;

(iii) There shall be no order as to costs. Consequently, W.M.P.Nos.26465, 26492, 26470, 26479, 26481, 26482, 26491, 26467, 26490 of 2023; 3517 and 3518 of 2024 are closed.

(S.V.G., CJ.)

(D.B.C., J.)

02.04.2024

Index : yes

Speaking order

Neutral Citation : yes

grs



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To

1. The Director,
Central Board of Direct Taxes,
Ministry of Finance,
North Block, New Delhi - 110 001.

2. The Commissioner of Income Tax (Exemptions),
Income Tax Department,
No.121, M.G.Road, Nungambakkam,
Chennai - 600 034.



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**THE HON'BLE CHIEF JUSTICE
AND
D.BHARATHA CHAKRAVARTHY, J.**

grs

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