

AHMEDABAD RANA CASTE ASSOCIATION

v.

COMMISSIONER OF INCOME TAX, GUJARAT

September 16, 1971

[K. S. HEGDE AND A. N. GROVER, JJ.]

Income-tax Act, 1922, s. 4(3)(i) and Income-tax Act, 1961 s. 11—Income of assessee to be utilised for benefit of a community—Beneficiaries members of the community resident in a city and others admitted according to caste customs and usage—If united by common quality of impersonal nature.

The assessee was an association of persons and held various properties for the purposes set out in its constitution. One of the purposes was the management of the movable and immovable properties of the Rana community of the City of Ahmedabad, doing acts to improve education in the community and to give medical help to the community, etc. The definition of Rana community comprised two classes—one class consisting of those who are natives of Ahmedabad while the other consists of such persons who are admitted by the Rana caste according to the old custom or the usage of the community.

On the question whether the income of the assessee-trust was exempt under s. 4(3)(1) of the Income-tax Act, 1922, or s. 11 of the Income-tax Act, 1961, the High Court held that since the second class of persons consisted of those who had been accepted by the caste according to its old custom or usage, all the beneficiaries were not united by a common characteristic or attribute of an impersonal nature and therefore, the beneficiaries did not constitute a community or a section of the community

Allowing the appeal to this Court,

HELD : An object beneficial to a section of the public is an object of general public utility. But the section of the community sought to be benefitted must be sufficiently defined and identifiable by some common quality of a public or impersonal nature. The common quality, in the present case, uniting the potential beneficiaries consists of being members of the Rana caste or community of Ahmedabad whether as natives or as being admitted to that caste or community under custom or usage. The mere fact that a person of the Rana community who is not an original native of Ahmedabad has to prove his credentials and according to the custom and usage of that community cannot introduce a *personal element*. Whenever a question arises whether a person belongs to a particular community or caste the custom or usage prevailing in that community must play a decisive and vital part. The personal element or personal relationship which takes a group out of a section of the community is their personal relationship to a single propositus or to several propositi or a relationship of a similar nature. Therefore, the members of the Rana caste who are not natives of Ahmedabad but who come to reside there and are accepted as members of that caste according to its usage and customs could be said to have a relationship of an impersonal nature. [748 B-D; 749 D-G; 750 B-D]

Hazrat Pirmohamed Shah Saheb Roza Committee v. Commissioner of Income-tax, Gujarat, 58 I.T.R. 360, *Commissioner of Income-tax, Madras v. Andhra Chamber of Commerce*, 55 I.T.R. 722, *Re Compton, Powell v. Compton & Ors.*, (1945) Ch. 123, *Trustees of the Londonderry Presbyterian Church House v. Commissioners of Inland Revenue*, 27 T.C. 431 and *Oppenheim v. Tobacco Securities Trust Co. Ltd. & Ors.*, (1951) A.C.

A 297, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 2146-2148 of 1968 and 1284 to 1286 of 1971.

B Appeals by certificate/special leave from the judgment and order dated July 25, 1967 of the Gujarat High Court in Income-tax Reference No. 4 of 1966.

S. T. Desai, R. P. Kapoor for *I. N. Shroff*, for the appellant (in all the appeals).

C *S. K. Aiyar, R. N. Sachthey* and *B. D. Sharma*, for the respondent (in all the appeals).

The Judgment of the Court was delivered by

D **Grover, J.** These appeals (C.As. 1284-1286/71) are by special leave from a judgment of the Gujarat High Court in an Income tax Reference. Originally the appeals had been filed by certificate (C.As. 2146-2148/68) but that was found to be defective as no reasons were stated therein.

E The Reference relates to the assessment years 1960-61, 1961-62 and 1962-63 the relevant accounting years being the financial years ending 31st March 1960, 31st March 1961 and 31st March 1962. During the relevant years the assessee which is an association of persons held various properties for the purposes set out in its constitution. It is unnecessary to refer to all the clauses therein. It would suffice to mention that among the objects and purposes of the institution were the management of the movable and immovable properties of the Rana community of the city of Ahmedabad, doing acts to improve the education in the community, to give medical help to the community etc. F The Income tax Officer took the view that the objects were not charitable and therefore the assessee was not entitled to the exemption under s. 4(3)(i) of the Income tax Act, 1922. The Appellate Assistant Commissioner held that although the assessee was G registered under the Bombay Public Trust Act the beneficiaries were not the public and the class of community sought to be benefitted was very vague and ill-defined and the number was also negligible. He held certain clauses among the objects to be charitable but others were held by him not to be charitable. H The matter was taken in appeal to the Tribunal. The Tribunal held that the beneficiaries as found in the Constitution were the Rana community meaning thereby the "natives of Ahmedabad only and other community members accepted by the community as per old rules of the community and staying in Ahmedabad.

This is a well defined cross-section of the public of Ahmedabad, certain and ascertainable. This number, we are told, is about 2,400(?) but no minimum number is prescribed to constitute a clear, ascertainable cross-section of the general public. It cannot be said, therefore, that there is any vagueness about the beneficiaries or of their public character." After considering various other matters the Tribunal came to the conclusion that the trust was a charitable trust and therefore entitled to the exemption claimed. The Commissioner of Income tax moved the Tribunal for stating the case and referring the question of law arising from its order. The Tribunal referred the following question to the High Court :—

"Whether on the facts and in the circumstances of the case the income of the assessee trust is exempt under s. 4(3)(i) of the Income tax Act 1922 and s. 11 of the Income tax Act 1961."

The High Court decided the whole matter only on one point. It considered the question whether the purpose for which the properties were held by the assessee had the public character which the income tax law required of the charities it recognised for the purpose of exemption. The question that was posed was "are the purposes directed to the benefit of the community or a section of the community as distinguished from private individuals or a fluctuating body of private individuals"? There can be no doubt, according to the High Court, that the beneficiaries did not constitute a community since they were confined only to the members of the Rana Caste residing in Ahmedabad and fulfilling one or the other conditions set out in the definition clause. It had, therefore, to be decided whether the beneficiaries could be said to constitute a section of the community. After referring to certain English cases and the decision of this Court in *Hazrat Pirmohamed Shah Saheb Roza Committee v. Commissioner of Income tax, Gujarat*⁽¹⁾, the High Court rightly held that the enquiry must be directed to what the common quality was which united the parties within the class and whether that quality was essentially impersonal or personal. If the former, the class would rank as a section of the community; if the latter, the answer would be in the negative. According to the High Court having regard to the common opinion amongst the people and the conditions of Indian life if the beneficiaries were the members of the Rana caste residing in Ahmedabad and were natives of Ahmedabad they would be section of the community because the common quality uniting them within the class would be essentially an impersonal quality. But the High Court proceeded to say :

(1) 58 I.T.R. 360.

A “the class of beneficiaries before us consists of two sections; one comprising members of the Rana Sect who are natives of Ahmedabad and the other comprising members of the Rana Sect who are residing in Ahmedabad and who have been accepted by the community according to the old usage of the caste. It is difficult to see how this class of beneficiaries can be said to constitute a well section of the public connected together by a common quality or characteristic”.

B Although it was recognised that even the second class of beneficiaries were members of the Rana caste and were residing in Ahmedabad but the distinguishing feature, in the view of the High Court, was that the second section or class consisted of persons who had been accepted by the caste according to its old custom or usage. This led the High Court to conclude that all the beneficiaries comprised in this class were not united by a common characteristic or attribute. The question referred was answered in the negative.

D Section 4(3)(i) to the extent it is material is in the following terms :—

“4(3) Any income, profits or gains falling within the following classes shall not be included in total income of the person receiving them :

E (i) Subject to the provisions of clause (c) of subsection (1) of section 16, any income derived from property held under trust or other legal obligation wholly for religious or charitable purposes, in so far as such income is applied or accumulated for application to such religious or charitable purposes as relate to anything done within the taxable territories, and in the case of property so held in part only for such purposes, the income applied or finally set apart for application thereto:

F Provided that

G The operative part of s. 11(1)(a) of the Income tax Act 1961 is in similar terms. There are certain points of difference between the provisions of the two Acts. Some of them may be noticed. In the 1922 Act a charitable purpose included relief of the poor, education, medical relief and advancement of any other object of general public utility. Section 2(15) of the Act of 1961 introduces the following qualifying words to general public utility, “not involving the carrying on of any activity for profit”. Under H the Act of 1922 a trust for the benefit of any particular religious community or caste was entitled to exemption but under the Act of 1961 a charitable trust which is created for such benefit on or

after the first day of April 1962 would be disentitled to the exemption. In the present case the trust was created prior to first April 1962 and therefore no question arises of its not being entitled to the exemption if other conditions were satisfied even though it was created for the benefit of the Rana caste of Ahmedabad.

It is well settled by now and the High Court also has rightly taken that view that an object beneficial to a section of the public is an object of general public utility. To serve a charitable purpose it is not necessary that the object should be to benefit the whole of mankind or all persons in a particular country or State. It is sufficient if the intention to benefit a section of the public as distinguished from a specified individual is present. This Court in *Commissioner of Income tax, Madras v. Andhra Chamber of Commerce*⁽¹⁾ overruled the view of Beaumont C.J. in *Commissioner of Income tax v. Grain Merchants' Association of Bombay*⁽²⁾ on the point. It was, however, observed that the section of the community sought to be benefitted must be sufficiently defined and identifiable by some common quality of a public or impersonal nature. Where there was no common quality uniting the potential beneficiaries into a class the trust might not be regarded as valid. In the various orders the clause relating to the beneficiaries has not been clearly and accurately set out. In the petition of appeal dated October 7, 1968 the provisions of the constitution of the assessee are set out and with reference to the community it is stated, "Rana community means natives of Ahmedabad only and the other community brothers accepted by the community as per old rules of the community staying in Ahmedabad". It is common ground that the word "old rules" do not represent the correct translation of the original word in Gujarati which is *Riwaj* meaning custom. The learned judges of the High Court also, who are conversant with that language, have proceeded on the basis that the correct rendering of the aforesaid word is custom or usage. That is why according to the High Court the definition comprises two classes of members of Rana caste residing in Ahmedabad, one class consisting of those who are natives of Ahmedabad while the other class consists of such persons who are admitted by the Rana caste according to the old custom or usage of the community. The reason which prevailed with the High Court for treating the second class as not being united with the first class by a common characteristic or attribute was that its members have to be accepted by the community according to the old custom or usage and that the entry of the members of this class into the Rana caste residing in Ahmedabad was dependent on the decision of the caste to

() 55 I.T.R. 722.

(2) 6 I.T.R. 427.

A admit them. We are altogether unable to concur in the approach or the conclusion of the High Court on the above point.

B We may usefully refer to the judgment of Lord Greene M.R. in *re Compton, Powell v. Compton & Others*⁽¹⁾. The Master of Rolls declared that no definition of what was meant by "a section of the public" had, so far as he was aware, been laid down. But he indicated that the trust of a public character is one in which the beneficiaries do not enjoy the benefit when they receive it by virtue of their character as individuals but by virtue of their membership of a specified class the common quality uniting potential beneficiaries into the class being essentially an impersonal one. This common quality he said was "definable by reference to what each has in common with the others and that is something into which their status as individuals does not enter".

C Andrew, L.C.J. accepted this statement of law without hesitation in *Trustees of the Londonderry Presbyterian Church House v. Commissioners of Inland Revenue*⁽²⁾. What has to be seen in the present case is whether the members of the Rana caste who are not natives of Ahmedabad but who come to reside there and are accepted as members of that caste according to its usage and customs can be said to have a relationship which is an impersonal one dependent on their condition as members of the Rana community. We are unable to comprehend how such members of the Rana caste can be regarded as having been introduced into that caste by consideration of their personal status as individuals. As a matter of fact the predominant content and requirement of the clause defining "beneficiaries" in the constitution of the assessee is the factum of their belonging to the Rana community of Ahmedabad. The common quality, therefore, uniting the potential beneficiaries into the class consists of being members of the Rana caste or community of Ahmedabad whether as natives or as being admitted to that caste or community under custom or usage. The mere fact that a person of the Rana community who is not an original native of Ahmedabad has to prove his credentials according to the custom and usage of that community to get admitted into that community cannot introduce a personal element. In *Oppenheim v. Tobacco Securities Trust Co. Ltd. & Others*⁽³⁾ the trustees were directed to apply certain income in providing for the education of children of employees or "former employees" of a British limited company or any of its subsidiary or allied companies. It was held by the House of Lords by a majority that though the group of persons indicated was numerous, the nexus between them was employment by particular employers and accordingly the trust did not satisfy the test of public

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(1) [1945] Ch. 123.

(2) 27 T.C. 431.

(3) [1951] A.C. 297.

benefit requisite to establish it as charitable. This is what Lord Simonds observed :— A

“A group of persons may be numerous but, if the nexus between them is their personal relationship to a single propositus or to several propositi, they are neither the community nor a section of the community for charitable purposes”. B

The personal element of personal relationship which takes a group out of section of the community for charitable purposes is of the nature which is to be found in cases of the aforesaid type. We cannot possibly discover a similar element of personal nature in the members of the Rana community who settle in Ahmedabad and have been accepted by the Rana community of that place as members of that community. As regards the acceptance of such persons as members of the community or caste, according to custom and usage, it is well known that whenever a question arises whether a person belongs to a particular community or caste the custom or usage prevailing in that community must play a decisive and vital part. That cannot be regarded as an element which would detract from the impersonal nature of the common quality. C
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For the reasons given above the appeals are allowed and the answer returned by the High Court is discharged. The matters are remitted to the High Court for returning the answer to the question referred after determining the other points which were left undecided. The parties shall bear their own costs in these appeals. Appeals by certificate (*i.e.* C.As. 2146-2148 of 1968) are dismissed, the certificate being defective for want of reasons. E

V.P.S.

Appeals allowed.