

M/S. LISIE MEDICAL INSTITUTIONS.

v.

THE STATE OF KERALA & ORS.

(Civil Appeal No. 6799 of 2017)

MAY 09, 2017

[A. K. SIKRI AND ASHOK BHUSHAN, JJ.]

*Kerala Building Tax Act, 1975:*

*s. 3(1) Explanation I – Interpretation of – Property of the appellant assessed to building tax – Challenged – Single Judge as well as Division Bench of High Court relying on S. H. Medical Centre Hospital case held that the hospital is not liable to be exempted from the tax – On appeal, held: S. H. Medical Centre Hospital case has wrongly interpreted Explanation I to s. 3(1) in not noticing that it contains the word “includes” and not “means” – Matter is therefore referred to Larger Bench.*

Referring the matter to Larger Bench, the Court

**HELD:** In *\*S. H. Medical Centre Hospital* case an error in interpreting Explanation I to Clause 1 of Section 3 of the Kerala Building Tax Act, 1975 has occurred in not noticing that it contains the word “includes” and not “means”. This error led to holding that ‘charitable purpose’ meant only ‘relief of the poor and free medical relief’. Relief to the poor and free medical relief is only one of the facets of charitable purpose and Explanation simply clarifies that too be a charitable purpose. However, the inclusive definition points out that relief to poor and free medical relief is not exhaustive as to what charitable purpose would mean. Thus, in order to find out the true scope of charitable purpose, one will have to look into the judgments of this Court, even if this very expression is examined in the context of the Income Tax Act. The Court disagrees with the opinion of the Division Bench in *S.H. Medical Centre Hospital* case. [Paras 14 and 15] [51-C-F]

*\*S.H. Medical Centre Hospital v. State of Kerala (2014) 11 SCC 381 – disagreed.*

*Additional Commissioner of Income Tax, Gujarat v. Surat Art Silk Cloth Manufactures Association, Surat (1980)*

- A        **2 SCC 31 : [1980] 2 SCR 77; *Queens Educational Society v. CIT* (2015) 8 SCC 47 : [2015] 3 SCR 838 – referred to.**

**Case Law Reference**

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|---|-------------------|-------------|---------|
| B | (2014) 11 SCC 381 | disagreed   | Para 5  |
|   | [1980] 2 SCR 77   | referred to | Para 10 |
|   | [2015] 3 SCR 838  | referred to | Para 10 |

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 6799 of 2017.

- C        From the Judgment and Order dated 18.07.2016 of the High Court of Kerala at Ernakulam in W. A. No. 1386 of 2016.

F. S. Nariman, Sr. Adv, Isaal M. Perumpillil, M. T. George, Jijo Paul Kalloukk Karan, Advs. for the Appellant.

- D        V. Giri, Sr. Adv., C. K. Sasi, Manukrishnan G., Advs. for the Respondents.

The Judgment of the Court was delivered by

- E        **A. K. SIKRI, J.** 1. This appeal is preferred against the order dated 18.07.2016 passed by the Division Bench of the High Court in Writ Appeal No. 1386 of 2016 which was filed by the appellant herein challenging the order of the learned single Judge whereby the writ petition of the petitioner has been dismissed. We may mention at the outset that the appellant (M/s. Lisie Medical Institutions) is claiming itself to be a charitable institution and is, thus, seeks exemption from liability of paying building tax under the Kerala Building Tax Act, 1975 (for short the 'Act') in respect of its building in Ernakulam, Kerala where it runs the hospital.

2. A brief description of background facts would suffice, which is as follows:

- G        The appellant 'M/s. Lisie Medical Institutions' was constituted under a Registered Trust Deed, executed on 03.04.1990 by the Archdiocese of Ernakulam, appointing Rev. Msgr. Parackel as the trustee of the Trust. The appellant-trust is only an instrumentality of its settler, the Church. His Excellency Mar Sebastian Adayantharath (Chairman), Auxiliary Bishop of Ernakulam – Angamaly Archdiocese, His Excellency Mar Jose Puthenveetil Auxiliary Bishop of Ernakulam – Angamaly

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Archdiocese, Msgr. Sebastian Vadakkumpadan, Syncellus of the Ernakulam – Angamaly Archdiocese, Rev. Fr. Thomas Vaikathuparambil, Director (Chief Executive Trustee), Rev. Fr. Babu Kalathil, (Asst. Executive Trustee), Rev. Fr. Varghese Palatty, (Asst. Executive Trustee), Rev. Fr. Joshy Puthuva, (Finance Manager), Rev. Fr. Sebastian Kalapurackal, (Director), Sr. Thelma MSJ (Member), Adv. Bobby Vallamattam (Member), Dr. Babu Palatty (Member), Fr. Anto Chalissery (Asst. Executive Trustee), and Fr. Jimmy Kunnathoor, (Asst. Executive Trustee), constitute its present Board of Trustees. The Trust was constituted *inter alia* for achieving the following main and ancillary objects:

- (a) The main object of the Trust is the reception and Treatment of persons suffering from illness, or mental defectiveness, or for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation solely for philanthropic purposes and not for purposes of profit, and that too irrespective of caste, creed and community and especially for that purpose to take over (when handed over) the management of Lisie Hospital or any other institution or to own, start and manage any other such institutions.
- (b) The ancillary object of the Trust is to extend financial help to the poor either directly or through other institutions, either for medical relief or in extreme necessity for other charitable purposes.

It is claimed that the Trust Deed itself shows that the predominant and ancillary objectives of the Trust is charitable purpose alone, with no intention of whatsoever nature to earn or make any profit at any time, but only philanthropic purposes to serve the humanity. Thus each and every act contemplated under the Deed of Trust is advancement of charity which is not restricted to any class, caste or religion.

3. In Kerala, building tax is leviable under the Act. Under Section 5 of the Act, it is provided that on every building the construction of which is completed on or after 10.02.1992, shall be charged building tax based on the plinth area at the rate specified in the Schedule to the Act. Section 3 of the Act provides for exemptions from the application of the provisions of the Act itself. Since Section 3 of the Act is of real importance or material in deciding the issues raised herein, it is extracted hereunder:

- A “3. Exemptions. – (1) Nothing in this Act shall apply to –
- (a) buildings owned by the Government of Kerala or the Government of India or any local authority; and
- B (b) buildings used principally for religious, charitable or educational purposes or as factories or workshops or cattle/pig/poultry farms or poly houses.

**Explanation I. – For the purposes of this sub-section, “charitable purpose” includes relief of the poor and free medical relief.**

- C Explanation II. – For the purposes of this sub-section, –
- (i) “cattle/pig/poultry farms” shall have the same meanings as assigned to them in Clauses (d), (m) and (n) respectively in Rule 2 of the Kerala Panchayat Raj (Licensing of Livestock farms) Rules, 2012 but shall not include the farms exclusively used for the purpose of sale.
- D (ii) Cattle/pig/poultry farms shall have the minimum number of animals or birds, as the case may be, as provided in sub-rule (1) of the Rule 3 of the said Rules.

E Explanation III. – “poly house” means any building erected for cultivation purposes under controlled climatic conditions.

- (2) If any question arises as to whether a building falls under sub-section (1) or under Section 3A, it shall be referred to the Government and the Government shall decide the question after giving the interested parties an opportunity to present their case.
- F (3) A decision of the Government under sub-section (2) shall be final and shall not be called in question in any Court of law.”

G 4. It is the submission of the appellant that a plain reading of the clauses (a) and (b) makes it very clear that in providing exemption from the operation of the said Act, the legislature has classified buildings into two classes based on (i) the ownerships of the building, and (ii) the use or purpose to which such buildings are put to. Thus, under Clause (b) of Section 3 of the Act, buildings principally used for religious, charitable or educational purposes, or as factories and workshops etc. are exempted from the liability for payment of tax under Section 5 of the Act. It can also be discerned that the legislature has identified and recognised three

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broad categories or classes of activities viz. (a) religious, (b) charitable or (c) educational purposes. The appellant's case is that if any building is principally used for any of the said three purposes, that building is not amenable for building tax under the Act.

5. The Commissioner of Income Tax, Cochin by his order dated 21.06.2000 has treated the appellant as a charitable trust under Section 12A of the Income Tax Act, 1961. As a result, the appellant is getting requisite relief insofar as income tax is concerned. However, insofar as payment of building tax is concerned, the respondent authorities think otherwise. The Assessing Officer issued notice dated 08.10.2014 to the appellant under Sections 9(2) and 9(4) of the Act directing the Director of the appellant institution to be present with documents for making assessments of the building in question. The appellant claimed exemption from the payment of building tax under the purview of the Act. However, its plea did not find favour with the respondent resulting in passing the assessment order dated 17.11.2004, thereby assessing the property to tax. The appeal filed by the appellant under Section 11 of the Act was dismissed on 25.04.2015. Thereafter, the appellant made a representation to the Chief Minister under Section 3(2) of the Act on 27.10.2015 which was rejected vide order dated 17.03.2016 passed under Section 3(1)(b) of the Act on the ground that the entire medical relief is not rendered free of cost. Challenging that order, the appellant filed the writ petition in the High Court of Kerala. The learned single Judge dismissed the said writ petition holding that the case was covered by the judgment of this Court in *S. H. Medical Centre Hospital v. State of Kerala*, (2014) 11 SCC 381. This order dated 16.06.2016 reads as under:

“Petitioner challenges the assessment order passed by the authorities under the Kerala Building Tax Act, 1975. It is contended that the hospital is liable to be exempted from the provisions of the Act as the petitioner is running a charitable institution. The issue is covered by the judgment of the Apex Court in *S. H. Medical Centre Hospital v. State of Kerala* [2014(1)KHC222].

2. In the light of the aforesaid judgment, I do not think that the authorities under the Act had committed any error in passing the assessment orders.

This writ petition is hence dismissed.”

A 6. It is against this order writ appeal was filed by the appellant which has again dismissed with the sole observation that case is covered by the judgment of this Court in the case of *S. H. Medical Centre Hospital* and the impugned order dated 18.07.2016 reads as under:

B “The issue raised in this writ appeal concerning the claim of the appellant for exemption from Building Tax levied under the Kerala Building Tax Act, 1975 is fully covered against it by the judgment of the Apex Court in *S. H. Medical Centre Hospital v. State of Kerala*, [2014 (1) KHC 222]. This being the factual position, we do not see any merit in this appeal.

C Appeal fails and it is dismissed accordingly.”

7. It is clear from the order of the learned single Judge as well as the Division Bench that on the ground that the matter is covered by the judgment of this Court, the plea of the appellant is rejected.

D 8. Mr. Nariman, learned senior counsel appearing for the appellant, read out the relevant portions from the judgment in *S. H. Medical Centre Hospital* and submitted that there was an apparent error committed in the said case while interpreting the provisions of Section 3(1) of the Act. He pointed out that Explanation I attached to Section 3(1) of the Act defines charitable purpose in the following terms:

E “Explanation I. – For the purposes of this sub-section, “charitable purpose” **includes** relief of the poor and free medical relief.”

F 9. Learned senior counsel emphasised that as per this Explanation, charitable purpose ‘includes’ relief of the poor and free medical relief. According to him, the word ‘includes’ is ignored and misread as ‘means’ in *S.H. Medical Centre Hospital* judgment which is clear from the following observations:

“17. ... The High Court has correctly interpreted the “Explanation” clause to Section 3(1) of the Act to hold that “charitable purpose” **means** “relief of the poor and free medical relief”.

G 10. According to Mr. Nariman, this apparent mistake led to erroneous interpretation of Explanation I, by holding that the purpose would be charitable only when ‘relief of poor and free medical relief’ is given. On the contrary, the word ‘includes’ in Explanation I simply clarifies that relief of the poor and free medical relief is also a charitable purpose,

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meaning thereby there may be various other activities which can be regarded as charitable. Mr. Nariman submitted that the word “includes” suggests that broad and wide meaning needs to be given to the expression ‘charitable purpose’. He argued that giving of medical benefits itself is a charitable purpose. He referred to the order dated 17.03.2016 of Government of Kerala whereby request of the appellant for exemption from payment of building tax was rejected. In that order, the Government has accepted the fact that appellant hospital functioning at Ernakulam was doing all sort of efforts to improve the subsidised medical treatment and medicines to patients from lower strata of the society, as well as charging affordable rates compared to some other Hi-Tech hospitals elsewhere in the State. He also submitted that a Constitution Bench of this Court in the case of *Additional Commissioner of Income Tax, Gujarat v. Surat Art Silk Cloth Manufactures Association, Surat*, (1980) 2 SCC 31 has interpreted the term, “charitable purpose” and has held that:

“so long as the purpose does not involve the carrying on of any activity for profit, the requirement of the definition would be met and it is immaterial how the monies for achieving or implementing such purpose are found, whether by carrying on an activity for profit or not.”

This Court further held:

“it is not therefore enough that as a matter of fact an activity results in profit but it must be carried on with the object of earning profit. Profit making must be the end to which the activity must be directed or in other words, the predominant object of the activity must be making a profit. Where an activity is not pervaded by profit motive, but is carried on primarily for serving the charitable purpose, it would not be correct to describe it as an activity for profit. But where on the other hand, an activity is carried on with the predominant object of earning profit, it would be an activity for profit, though it may be carried on in advancement of the charitable purpose of the trust or institution. Where an activity is carried on as a matter of advancement of the charitable purpose or for the purpose of carrying out the charitable purpose, it would not be incorrect to say as a matter of plain English grammar that the charitable purpose involves the carrying on of such activity,

A but the predominant object of such activity must be to subserve  
the charitable purpose, and not to earn profit. The charitable  
purpose should not be submerged by the profit making motive, the  
latter should not masquerade under the guise of the former. The  
purpose of the trust must be “essentially charitable in nature” and  
B it must not be a cover for carrying on an activity which has profit  
making as its predominant object.”

11. He also argued that this Court has consistently followed the  
dominant object test for determining the charitable purpose of the  
institution. Reliance is placed in the case of *Queens Educational Society*  
v. *CIT*, (2015) 8 SCC 47. Submission of Mr. Nariman was that since  
C the Act does not define the term ‘charitable purpose’, the definition or  
its requisites laid down by this Court in aforesaid judgments would be  
applicable, even when these cases are under the Income Tax Act.

12. Referring to the activities of the appellant hospital, it was  
submitted that the hospital and its infrastructural facilities are entirely  
D and exclusively dedicated to charity.

13. Mr. Giri, learned senior counsel appearing for the respondents,  
on the other hand, referred to the order dated 17.03.2016 passed by the  
Government of Kerala wherein it was recorded that only 4.23% of the  
total income was expended for charity in the year 2013-2014, whereas  
E this figure was only 4.56% in the year 2014-2015, Mr. Nariman’s reply  
was that this argument ignored the fact that apart from spending aforesaid  
amount entirely on charity, the remaining income was utilised for the  
development of hospitals, infrastructure facilities and medical benefits  
therefrom were provided to poor people which itself was to be treated  
F as charitable activity. In this behalf, it was submitted that the appellant-  
institution utilised the entire income derived from running the hospital  
from its inception only for the development of its infrastructural facilities  
and no part of its income is diverted for any other purposes other than  
the primary objectives. That is why the hospital started with only 3  
doctors and housed in few residential buildings with only 24 beds in the  
G year 1956, has become a super speciality hospital in the passage of time  
with 150 doctors working in 25 departments with a bed-strength of 1000,  
taking care of the needs of lakhs of people. The Hospital at present  
conducts heart-transplant surgeries, kidney-transplant surgeries etc. It  
conducts a number of camps in rural areas as its health check-up programs

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for creating awareness on blood donation, organ donation, pain and palliative care, free home-care treatment to patients belonging to BPL, free dialysis for deserving patients, etc. The moderate charges which the hospital is levying from its patients, is not for generating profit for the hospital, but only as a mechanism to facilitate free treatment for poor patients, and to treat others at very reasonable rates, as the major chunk of the patients of the hospital belongs to the lower strata of the society. The hospital is charging patients at the lower rate prevalent in other hospitals of its class in the State.

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14. We find substance in the arguments made by Mr. Nariman. With due respect to the Bench which rendered the judgment in *S. H. Medical Centre Hospital*, it appears that an error in interpreting Explanation I to Clause 1 of Section 3 of the Act has occurred in not noticing that it contains the word "includes" and not "means". This error led to holding that 'charitable purpose' meant only 'relief of the poor and free medical relief'. Relief to the poor and free medical relief is only one of the facets of charitable purpose and Explanation simply clarifies that too be a charitable purpose. However, the inclusive definition points out that relief to poor and free medical relief is not exhaustive as to what charitable purpose would mean. Thus, in order to find out the true scope of charitable purpose, one will have to look into the judgments of this Court, even if this very expression is examined in the context of the Income Tax Act.

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15. We respectfully disagree with the opinion of the Division Bench in *S. H. Medical Centre Hospital*. The matter, thus, requires consideration by a Larger Bench. Registry is directed to place the matter before Hon'ble The Chief Justice of India for constituting a Larger Bench.

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