

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O.C. J.

WRIT PETITION NO.366 OF 2010
WITH
WRIT PETITION NO.367 OF 2010

Vanita Vishram Trust. ...Petitioner.
Versus
Chief Commissioner of Income Tax & Anr. ...Respondents.

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Mr. Percy J.Pardiwala, Sr.Advocate with Ms.Aasifa Khan and
Mr.Satish R.Mody for the Petitioner.
Mr. Yogesh Pathaki i/b. Mr.Suresh Kumar for the Respondents.

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**CORAM : DR. D.Y. CHANDRACHUD &
J.P. DEVADHAR, JJ.**

May 6, 2010.

ORAL JUDGMENT (PER DR.D.Y.CHANDRACHUD, J):

The Petitions arise out of an order passed by the First Respondent, the Chief Commissioner of Income Tax, Mumbai, declining to grant approval to the Petitioner under Section 10(23-C) (vi) of the Income Tax Act, 1961.

2. The Petitioner is a public charitable trust, registered under

the Bombay Public Trusts Act, 1950. The Petitioner has been conducting primary and secondary schools and colleges in Arts, Science and Commerce and for Technical Courses in Mumbai since 1929 and in Surat since 1940. Over 2500 students are stated to be pursuing their education at these institutions. The Petitioner conducts a hostel at Surat for outstation students who are admitted to the educational institutions conducted by the Petitioner where students and the supporting staff reside. The main object for which the Petitioner has been constituted is stated to be the education of women. Clause III(b) of the Memorandum of Association inter alia provides as follows :

“(b) To ameliorate the condition of Gujarati Hindu women of the Bombay Presidency and other places and to alleviate their social status by arousing their interest and educating them in subjects tending to their material, proper and suitable fields of work, usefulness and influence in Hindu society and for the purposes aforesaid to establish and conduct in the Bombay Presidency or elsewhere:

- (1)“Ashrams” or Homes for Gujarati Hindu women and girls, particularly widows and orphan girls either as free or as paying inmates.
- (2)Schools for imparting religious, secular and Industrial education and training in fine arts as far as possible

through the instrumentality of women, the inmates of the Ashrams and other women and girls.

- (3) Libraries including circulating libraries and reading rooms with a view to bring wholesome and instructive literature within reach of the inmates of the Ashrams and other Gujarati Hindu women and girls.
- (4) To provide gymnasiums, play-grounds, and places of recreation, and physical culture, and to furnish and maintain the same and to permit the same to be used by the inmates of the Vanita Vishram and the institutions thereof or allied thereto and their friends, either gratuitously or upon such terms and conditions as may be agreed upon, and generally to do whatever may seem best calculated to conduce to the physical health and general well being of such inmates and their friends.
- (5) To publish books, periodicals and pamphlets and deliver lectures and do such other things as may appear desirable.
- (6) To give pecuniary or other help to poor Gujarati Hindu women and girls (studying in the Institution).”

3. The other sub-clauses of clause (b) confer an ancillary power to acquire immovable property, to receive gift and donations and to invest the proceeds. Clause IV of the Memorandum states that the income and property of the Association shall be applied solely

towards the promotion of the objects of the Association and that no portion thereof shall be paid directly or indirectly by way of dividend, bonus or otherwise to the members of the Association. Under clause VIII, upon the winding up or dissolution of the Association, the surplus, if any, is not to be paid to or distributed among the members of the Association, but is to be transferred to another institution or to other institutions having similar objects.

4. Until Assessment Year 2004-05, the Petitioner was allowed an exemption under Sections 10(22) and 10(23-C)(vi) in addition to Section 11. The Petitioner submitted an application for approval for Assessment Years 2005-06 to 2007-08 on 10 October 2005 and 2008-09 to 2010-11 on 23 March 2008. Amongst the documents that were submitted with the applications were copies of the most recent orders passed under Section 10(23-C) for Assessment Years 2002-03 and 2004-05, the assessment order under Section 143(3) for Assessment Year 2000-01 and copies of the balance sheets and of the income and expenditure account together with schedules for the years

ending 31 March 2002, 31 March 2003 and 31 March 2004. The First Respondent issued a notice to show cause on 6 March 2009 calling for details. The First Respondent stated in the notice that on a perusal of the objects enlisted in the Trust Deed, it was found that the Trust existed for objects of a varied in nature and did not fulfill the condition that it should exist solely for the purpose of education. The Petitioner was called upon to furnish details of the amounts spent on any activity other than education. The First Respondent also stated that the Trust was seen to have earned a surplus over twelve percent from its activities which was invested in making additions to its assets and increasing its bank balances. The Petitioner was, therefore, called upon to submit as to how the Trust could be regarded as existing solely for educational purposes and not for profit.

5. In its response dated 17 March 2009, the Petitioner submitted that the only object contained in the Memorandum of Association was education for women. The Petitioner submitted that even if the amplitude of the object clause permitted varied activities,

yet since the Trust was carrying on only an educational activity, it could not be denied approval under Section 10(23-C)(vi). The Petitioner submitted that it was running a school at Mumbai and a school and college at Surat apart from which no other activities, except for education, were being carried on by the Trust. In so far as the surplus was concerned, the Petitioner submitted that additions were made to the assets including Bank balances and these were used and utilized only for carrying on educational activities. From the copies of the annual accounts filed with the First Respondent, it was submitted that the expenditure incurred was only for the purpose of education, that is for running primary and secondary schools and colleges which conducted Arts, Science, Commerce and Technical Courses. Details of the investments made from Assessment Year 2005-06 to 31 March 2008 were forwarded.

6. The First Respondent rejected the applications submitted by the Petitioner by an order dated 28 March 2009. While rejecting the application, the First Respondent held that the objects of the Trust

permitted the construction of Ashrams for Gujarati Hindu women and hence, the Trust existed for objects other than education. The second ground on which the applications were rejected was that the Trust had a surplus in excess of twelve percent from its activities and that the balance sheet for three years showed that the surplus was invested in making additions to the assets and increasing Bank deposits. On these grounds, the First Respondent concluded that even if the Trust exists for educational purpose, it would generate profits/surplus which was utilized for purchasing assets as stated in Schedule 8 to the balance sheet. The Petitioner thereupon moved applications under Section 154. By an order dated 30 November 2009, the applications for rectification have been dismissed. The applications for approval have been rejected for Assessment Years 2005-06 to 2007-08 and Assessment Years 2008-09 to 2010-11.

7. Counsel appearing on behalf of the Petitioner submitted that both the grounds on which the First Respondent has dismissed the applications for approval are misconceived. The submission

before the Court is that (i) The Petitioner does not carry on any other activity, save and except for conducting schools and colleges at Surat and Mumbai right from the inception of the Trust in 1928; (ii) The Petitioner must be regarded as existing solely for educational purposes and the existence of other objects in the object clause of the Memorandum of Association would be irrelevant in a case such as the present where over its existence for nearly eighty years, the Petitioner has carried on no other activity except for the conduct of educational institutions; (iii) It has not been disputed that the hostel which is conducted by the Petitioner at Surat is only for accommodating outstation students of the institution conducted by the Petitioner and for the supporting staff; (iv) The existence incidentally of a surplus which is generated from the activity of conducting schools and colleges would not detract from the character of the Petitioner as existing solely for educational purposes and not for profit; (v) The entire surplus is utilized only for the purpose of education and there is a specific provision in the Memorandum under which no part of the profits can be distributed; (vi) The provisions made in Section 10(23-

C) would indicate that the existence of a surplus does not disentitle an institution to the grant of approval; (vii) The purpose of the surplus is to build up a corpus for the capital enhancement of the educational institutions conducted by the Trust. This is not a commercial purpose, but a purpose which is directly proximate to the main object of conducting educational institutions.

8. On the other hand, Counsel appearing on behalf of the Respondents submitted that the threshold requirement of Section 10(23-C)(iv) is the existence of an educational institution or, as the case may be, a University and its existence solely for educational purposes and not for profit. Counsel submitted that the object underlying the establishment of the Petitioner, as evidenced by the Memorandum of Association, is to ameliorate the condition of Gujarati speaking women belonging to the Hindu community and this object is sought to be achieved by means of imparting education and training. In these circumstances, it was urged that the object underlying the establishment of the Petitioner is not solely in

furtherance of an educational purpose, but the amelioration of the condition of women.

-9. Section 10(23-C) defines certain categories of income which shall not be included in computing the total income of any person for a previous year. Clause (vi) deals with income received by any person on behalf of any University or other educational institution existing solely for educational purposes and not for purposes of profit (other than those mentioned in sub-clause (iiiab) or (iiiad)) and which may be approved by the prescribed authority. Sub-clause (iiiab) speaks of a University or other educational institution existing solely for educational purposes and not for purposes of profit and which are wholly or substantially financed by the Government. Sub-clause (iiiad) speaks of a University or educational institution existing solely for educational purposes and not for profit if the aggregate annual receipts do not exceed an amount prescribed. Where the aggregate receipts exceed the amount prescribed, then the approval of the prescribed authority is mandated in order to enable the institution

to obtain the benefit of the exemption contained in sub-clause (vi). The provisos which have been enacted by Parliament regulate the manner in which applications are to be made, the grounds of an application and verification of compliance with the provision. Under the first proviso, an application under sub-clause (vi) has to be made in the prescribed form to the prescribed authority for the grant or continuance of an exemption. The prescribed authority, before approving an institution, University or educational institution is entitled to call for documents including audited annual accounts or information in order to satisfy itself about the genuineness of the activities carried on. The prescribed authority is empowered to make such enquiries as it deems necessary. The third proviso stipulates inter alia that where a University or other educational institution referred to in sub-clause (vi) applies its income or accumulates it for application wholly and exclusively to the objects for which it is established and in a case where more than fifteen per cent of its income is accumulated on or after 1 April 2002, the period of the accumulation of the amount exceeding fifteen per cent of its income

shall in no case exceed five years. For the purpose of these proceedings, it would not be necessary to advert every one of the provisos in further detail save and except to note that where a University or educational institution referred to in sub-clause (vi) has been approved by the prescribed authority and subsequently, the authority is satisfied that the institution/University had not applied its income in accordance with the stipulation contained in the third proviso or that the activities are not genuine or are not carried out in accordance with the conditions subject to which the approval was granted, the approval can be withdrawn after furnishing to the institution/University an opportunity of being heard.

10. Now, it is not in dispute before the Court that the Petitioner has been conducting primary and secondary schools and colleges for Arts, Science, Commerce and Technical courses in Mumbai since 1929 and in Surat since 1940. Nor is there any dispute before the Court that save and except for conducting these educational institutions, the Petitioner has not carried on any other activities right since 1929. In

this background, it would be necessary to advert to the objects set out in the Memorandum of Association. Clause III(b) spells out as the object, amelioration of the condition of Gujarati Hindu women of the then Bombay Presidency and other places and alleviation of their social status by educating to them in subjects tending to their material, moral and spiritual advancement, opening out for them proper and suitable fields of work, lawfulness and influence in Hindu society. From this object, it is abundantly clear that the amelioration of the condition of Gujarati speaking Hindu women was sought to be improved, when the Trust was founded in March 1928, by providing for the education of this class of women. The means by which this object is sought to be achieved is by conducting Ashrams or homes for women and girls, particularly for widows and orphaned girls either as free or as paying inmates and by conducting schools for imparting religious, secular and industrial education and training in fine arts. A number of ancillary objects have been adverted therein including provision of libraries and gymnasiums, publication of books and by means of pecuniary and other help to students of the institution. A

holistic reading of the object clause would establish beyond doubt that the sole purpose for the establishment of the Petitioner was to further the cause of education amongst women belonging to a particular class, as stated therein. Though the objects clause contained varied objects including the management and development of movable and immovable properties, the statement of fact before the Court which is not disputed is that the only activity which has been carried out by the Trust ever since its inception is the conduct of educational institutions. The Court, it must be emphasized, is not dealing with an institution which has sought approval for the first time or which has been set up in the proximate past. The Trust has a history of over eighty years during the course of which the only activity is of conducting educational institutions.

11. The fact that the Trust exists solely for educational purposes is evidenced from the assessment orders for Assessment Years 2000-01 and 2006-07, copies of which form a part of the record before the Court. Both these orders which have been made under

Section 143(3) of the Act, contain a statement to the effect that the assessee is running schools with Gujarati and English as media of instruction at the primary and secondary stage and that the assessee also conducts a college for girls with the sole intent of imparting education. The record of these proceedings also contains a judgment of a Division Bench of this Court dated 29 June 2005 in a Reference under Section 256(1) to which the Petitioner was the applicant. The issue before the Court in the Reference was whether the assessee was entitled to exemption under Section 10(22) on interest earned on surplus funds of the school run by the Trust for Assessment Years 1979-80 and 1980-81. The Division Bench observed that merely because a certain surplus arose from the operations of the Trust, it could not be held that the institution was run for the purpose of profit, so long as no person or individual was entitled to any portion of the profit and the profit was utilized for the purpose of promoting the objects of the institution. The income of the Trust was, therefore, held to be exempt under Section 10(22). The Division Bench followed the decision of the Supreme Court in **Aditanar Educational**

Institution vs. Additional CIT,¹ and noted as a principle of law that if after meeting the expenditure, a surplus results incidentally from an activity lawfully carried on by the educational institution, the institution would not cease to be one which is existing solely for educational purposes since the object is not to make profit. The Division Bench also observed that if the Trust exists solely for educational purposes and conducts an educational institution, the fact that it had other objects would not disentitle it to the exemption so long as the activity carried out by it in that assessment year was that of running an educational institution and not for profit. The Court observed that the assessee had existed only for educational purposes which consisted of running educational institution and not for earning profits. The observations of the Division Bench which have been made in the context of Section 10(22) would furnish a cogent answer to both the issues on which the applications for approval were rejected by the First Respondent. Firstly, though the Memorandum of Association contains varied objects, so long as the record demonstrates that the assessee only conducts educational institutions,

1 (1997) 224 ITR 310

it must be regarded as existing solely for the purpose of education. No other activity is carried on. Secondly, the fact that a surplus may incidentally arise from the activities of the Trust, after meeting the expenditure incurred for conducting educational activities would not disentitle the Trust of the benefit of the provisions of Section 10(23-C).

12. In so far the aspect of surplus is concerned, one must in addition, advert to the provision which has been made by Parliament in the third proviso to Section 10(23-C). By the third proviso, it has been clarified that in the case inter alia of Universities or other educational institutions which have applied its income or accumulated it for application wholly and exclusively to the objects for which it is established and in a case where fifteen per cent of income is accumulated on or after 1 April 2002, the period of the accumulation of the amount exceeding fifteen per cent, shall in no case exceed five years. This provision would establish that Parliament did not regard the accumulation of income by a University or educational institution

governed by sub-clause (vi) as a disabling factor, so long as the purpose of accumulation is the application of the income wholly and exclusively to the objects for which the institution has been established. Parliament has, however, prescribed that where more than fifteen per cent of the income is accumulated after 1 April 2002, the amount exceeding fifteen per cent shall not be accumulated for a period in excess of five years.

13. For all these reasons, we are of the view that the rejection of the approval by the First Respondent was manifestly misconceived. Only two reasons have weighed with the First Respondent in rejecting the approval, both of which have been found to suffer from manifest error. In **Aditanar Educational Institution** (supra), the Supreme Court, while construing the provisions of Section 10(22), held that the availability of exemption should be evaluated each year to find out whether the institution has existed during the relevant year solely for educational purposes and not for the purposes of profit. If after meeting the expenditure, a surplus results incidentally from an

activity lawfully carried on by the educational institution, the institution will not cease to be one existing solely for educational purposes since the object is not to make profit. The decisive or acid test, the Supreme Court observed, is whether on an overall view of the matter, the object is to make a profit. In evaluating or appraising the issue, the Supreme Court noted that one should bear in mind the distinction between the corpus, the objects and the powers of the concerned entity.

14. The First Respondent while rejecting the applications of the Petitioner has adverted to the judgment of the Uttarakhand High Court in **Commissioner of Income Tax vs. Queens' Educational Society**.² The statement of facts as recited in the judgment of the High Court is to the effect that the assessee had a profit of thirty per cent in Assessment Year 2000-01 and twenty seven per cent in Assessment Year 2001-02. The assessee was conducting an educational institution. The Tribunal held that the assessee was entitled to the benefit of the exemption under Section 10(23-C). The

² (2009) 319 ITR 160

High Court observed that “the law is well settled that if the profit is proved by an educational society then that will be the income to the Society as the surplus amount remains in the account books of the society after meeting all the expenses incurred towards imparting the education”. A reference was made to the judgment of the Supreme Court in **Aditanar** (supra). The judgment of the Supreme Court was, however, distinguished on the ground that the objects clause of the assessee indicated that while there were other objects to be achieved, the assessee had done nothing except to pursue the main object of providing education and earning profit. Moreover, with the profit earned, the assessee had strengthened its capacity to earn more, rather than to undertake any other activities to fulfill the other objects for which the trust was constituted. Though the Trust had made an investment in fixed assets like furniture and buildings which may be connected with the imparting of education this, the High Court held, was with a view to expanding the institution and to earn more income.

15. If the facts as they appear in the judgment of the Uttarakhand High Court are considered, the case would be entirely distinguishable. The judgment of the High Court would indicate that the assessee in that case was construed to be one which existed with the object of enhancing the income and of earning profits as opposed to the provision of education. However, it would be necessary for this Court to observe that some of the observations contained in the judgment of the Uttarakhand High Court may not be in conformity with the law laid down by the Supreme Court in **Aditanar's** case (supra). The High Court took exception to the conduct of the assessee on the ground that though it was entitled to pursue other "noble and pious" objects, the assessee had done nothing to achieve them and had only pursued the main object of providing education and earning profit. Now, it must be appreciated that in order to obtain the benefit of the exemption under Section 10(23-C)(vi), the University or, as the case may be, educational institution must exist solely for educational purposes and not for the purposes of profit. The requirement that the institution must exist solely for educational purposes would militate

against an institution pursuing other objects. Consequently, the High Court was, in our view and with due respect, not correct in holding as a principle of law that the benefit of the exemption should be denied on the ground that the assessee has only pursued its main object of providing education and had not pursued the other objects for which the Trust was constituted. Were the assessee to pursue other objects, it would clearly run afoul of sub-clause (vi). The assessee must exist solely for educational purposes. In this view of the matter, while we hold that the facts of the present case are distinguishable, we have also recorded our reservations about the correctness of the statement of legal principle in the judgment of the Uttarakhand High Court. The attention of the Court has also been drawn to the fact that a Division Bench of the Punjab and Haryana High Court in **Pinegrove International Charitable Trust vs. Union of India**,³ has also expressed reservation about the view of the Uttarakhand High Court in **Queens' Educational Society** (supra).

16. For all these reasons, we are of the view that the Petitioner

³ CWP 6031 of 2009 decided on 29 January 2010.

will be entitled to succeed in these proceedings. The Rule is accordingly made absolute by setting aside the impugned order passed by the First Respondent on 28 March 2009 and by directing the First Respondent to grant approval to the Petitioner for Assessment Years 2005-06 to 2007-08 and for Assessment Years 2008-09 to 2010-11. There shall be no order as to costs.

(Dr.D.Y.Chandrachud, J.)

(J.P.Devadhar, J.)