Salgaonkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.987 OF 2012

1. Jai Hind Sindhu Education Trust,
a public charitable trust under
the Bombay Public Trust Act, 1950,
having its office at Jai Hind High School,
Deluxe Cinema Road, Pimprigaon,
Pune 411 017 ..

2. Nalini Gera,
adult Indian inhabitant, residing at 7C
Koregaon Road, Pune 411001 .. Petitioners

Versus

1. The State of Maharashtra ..
Mantralaya, Mumbai 400 032

2. Pimpri Chinchwad Municipal Corporation,
Pimpri, Pune -18

3. The Administrative Officer, (Taxes)
Pimpri Chinchwad Municipal Corporation,
Pimpri, Pune -18

4. Municipal Commissioner,
Pimpri Chinchwad Municipal Corporation,
Pimpri, Pune -18

5. Assistant Commissioner (Tax)
Pimpri Chinchwad Municipal Corporation,
Pimpri, Pune -18 .. Respondents

...

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Mr.Dormaan J. Dalal with Ms.Shirley Mody for the Petitioners.

Dr.Milind Sathe, Advocate General with Mr.Kedar B. Dighe, Addl.G.P. and Smt.Savita A. Prabhune, A.G.P. for the State/ Respondent No.1

Mr.Shrikrishna Ganbavale with Mr.Shantanu Patil for the Respondent Nos.2 to 5.

CORAM: BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ.

RESERVED ON : 28th JULY, 2026
PRONOUNCED ON : 29th SEPTEMBER, 2026

...

JUDGMENT (PER BHARATI DANGRE, J.)

1. The Petition having been admitted on 23/01/2013 is taken up for final hearing by consent of the respective counsel.

2. Petitioner No.1, a Public Charitable Trust registered under the Bombay Public Trusts Act, 1950, alleged to be established with the primary object to promote, run, takeover and manage the educational interests of the institutions in Maharashtra, seek a declaration that its premise are exempt from property tax and in turn, seek quashing and setting aside of the order dated 10/01/2012 passed by the Assistant Commissioner of Pimpri Chinchwad Municipal Corporation (hereinafter referred to as, 'PCMC'), imposing such levy.

A consequential relief is sought for withdrawing and recalling all such demand notices and bills raised and a restraint order is sought against the officials of the Corporation from raising any demand of property tax in future qua the premises of Petitioner No.1.

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The Petition was allowed to be amended, during its pendency so as to raise a challenge to the further demand notices seeking payment of property tax and also the consequential notice of attachment issued to Petitioner No.1.

3. We have heard learned counsel Mr.Dormaan Dalal for the Petitioners. The Respondent-State of Maharashtra is represented by the learned Advocate General Dr.Milind Sathe, whereas learned counsel Mr.Shrikrishna Ganbavale represented Respondent Nos.2 to 5 i.e. PCMC and its officers.

The pleadings in the Petition, in support of the reliefs sought therein, in specific is that Petitioner No.1 functions only for educational purposes purely on no profit basis, its main objective being to promote, run, takeover and manage the educational interests. A specific pleading is contained in the Petition to the effect that no property or funds of Petitioner No.1 were ever applied for any purpose or object other than the aforesaid object and the educational institutions managed by Petitioner No.1 are linguistic minority institutions and of the three institutions run by Petitioner No.1, two are Government aided.

It is pleaded that Petitioner No.1 runs a primary school, 'Jai Hind Primary School', a High School and a Junior College, 'Jai Hind High School and Junior College' and a college styled as 'Manghanmal Udharam (M.U.)', college of commerce, all being located in a common campus situated opposite Jijamata Hospital, Deluxe Cinema Road, Pimprigaon, Pune-17. The pleading in the Petition, as regards the manner in which the institutions are run, is to the following effect :-

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> "It is pertinent to note that of the aforementioned, the High School, Junior College and the college of commerce are mainly government aided minority educational institutions under the provisions of Article 30 of the Constitution of India. The said college of commerce provides three courses viz. B.com, B.B.A. and B.C.A. Out of these, B.com division (all three years) is the aided institution and the B.B.A. and B.C.A. divisions are unaided. In the said Junior College there are total 10 divisions each for standard 11th and 12th. Out of these, 6 divisions in each standard are aided and 4 are unaided."

4. In raising a challenge to the impugned order issued by Respondent No.4 as well as the subsequent demand notices premised on the ground that Petitioner No.1 is not eligible for property tax exemption as it accepts fees and donations and not imparting free education, it is the case of Petitioner No.1, that it is a Public Charitable Trust and all buildings in the campus/premises are solely occupied and used for charitable purpose and, therefore, it falls within the ambit of Section 132(1)(b) of the Bombay Provincial Municipal Corporations Act, 1949/The Maharashtra Municipal Corporations Act, 1949 (for short, "***Corporations Act of 1949***") and, hence, exempted from payment of property tax. Reliance is placed upon a 'No Due Certificate' dated 23/05/1991 issued in its favour thereby declaring that the building is being used for educational purposes and is exempted from property tax and there are no dues of property tax pending from Petitioner No.1. The said 'No Due Certificate' is a part of the Petition.

Relying upon the aforesaid, it is the case of the Petitioners that thereafter no demand for property tax made till 1999, when a demand notice was served enlisting the buildings subject to property tax falling within the jurisdiction of PCMC and as per the said notice, the Trust was liable to pay property tax w.e.f. 1982 amounting to Rs.6,49,950/- and the

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Trust was permitted to raise objection against the same on or before the stipulated date. However, according to the Petitioners, no justification was offered as to why the tax had been levied retrospectively w.e.f. 1982.

The Trust responded to the said notice, in an attempt to satisfy the Authority that it is a Public Charitable Trust and running the Government recognised institutions and all those educational institutions are run for advancement of object of the Trust and no commercial or profit generating activity is carried therefrom and a request was, therefore, made to continue the exemption and not to levy any property tax on the Trust.

The Trust was even directed to file an affidavit to the effect that it does not and will not accept any donation for the purpose of admission in its educational institutions, and accordingly, such an affidavit was also tendered on 16/07/2002. However, nothing worked with the PCMC and the demand of Rs.6,49,980/- towards property tax was confirmed.

Thereafter, the Petitioners entered into plethora of correspondence and several attempts were made to convince the Respondents Authorities that Petitioner No.1 was purely charitable institution and, hence, its premises are exempt from property tax and it does not carry out any commercial or profit generating activity, however, the Trust remained unsuccessful in satisfying the Authorities. As a result, a demand was raised in the sum of Rs.95,78,936/- in form of property tax, including arrears till the said date.

5. Upon the said notice being received, contemplating a levy of penalty at the rate of 2% for every month, the Trust

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addressed a letter to the Authority and requested for withdrawal of the illegal demand notice and the bills and a hearing was scheduled before the Authorities, when some precedents were relied upon by Petitioner No.1, still the Petitioners were unable to persuade the Authorities to accept their contention and on 10/01/2012, Respondent No.4, the Assistant Commissioner (Tax Collection) passed an order to the following effect :-

> "1. In the matter of tax assessment of the property No. 07/05/00892 of the Trust M/s. Jaihind Sindhu Education Trust, Pimpri after considering the Completion Certificate of building and construction found in the site visit the Tax assessed on the building of the Trust and date of Tax assessment mentioned in the Para No. 1 are correct and it is now confirmed. The property Tax bills issued to Trust and demands of tax made to the Trust by demand notices are correct. The all objections of the Trust are hereby rejected.
>
> 2. The Trust is not eligible for the exemption of the property tax under the provisions of the BPMC Act 1949 S. 132(1)(b) hence there is no substance in the points raised by the Trust for granting exemption in the property tax therefore the demand of the Trust for property tax exemption is rejected."

6. The aforesaid order gave rise to filing of the Petition in the month of January 2012. Upon the Petition being filed and upon issuance of notice to the Respondents, on 19/04/2012, ad-interim relief was granted in terms of prayer clause (d), declaring that pending the hearing and final disposal of the Petition, the Respondents are refrained from taking any coercive action against the Trust.

Admittedly, the said interim order continued to remain in force as it was not specifically vacated.

However, in the wake of subsequent demands and the notices being served, the Petition came to be amended on 14/03/2023, raising a challenge to the subsequent demands.

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7. The Petition is strongly contested by the PCMC and its Assistant Commissioner filed an affidavit primarily raising an objection that the Petitioners have an alternative remedy of filing an appeal under Section 406 of the Maharashtra Municipal Corporation Act. It is also pleaded by the Respondents that the Petitioners never applied for exemption of property tax, which resulted in issuance of tax demand notices from time to time and this was so specifically pleaded for the financial year 2022-2023, as according to the Respondents, the Petitioners have to seek exemption on year-to-year basis.

8. The learned counsel Mr.Dormaan Dalal, representing the Petitioners, while pressing the reliefs in the Petition would submit that Petitioner No.1 is a Trust registered under the Bombay Public Trusts Act, the registration being granted on 06/10/1955 and according to him, it functions for educational purposes only on no profit basis. According to him, the Deputy Director of Education, Pune Division has recognised the institutions run by the Petitioners as institutions run by Sindhi Linguistic Group, and, hence is entitled to avail the benefit under Section 3(2) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977. He would also place reliance upon the certificate issued by the Circle Officer, PCMC on 23/05/1991, which has certified thus :-

Certificate

The Head mistress of Jai Hind Primary School is hereby given a certificate by the PCMC Divisional office, Pimpri nagar, regarding No Tax dues certificate since the School is an Educational Institution and no taxes are levied on Educational Institutions. Hence No Tax is due. Thus 'No Objection Certificate' is issued.

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Circle Officer
Pimpri Chinchwad Municipal Corporation
Pimpri, Pune – 411 017

According to Mr.Dalal, the Petitioners have even tendered an affidavit to the Municipal Authorities and made a categorcial statement before this Court that Trust is not in receipt of any donation for the purpose of education and he would draw distinction by submitting that the donations given by the well wishers are not for the purpose of admission to the institution. He would place heavy reliance upon the audit reports of the years 2008 to 2010, showing that no funds of the Trust were applied for an object or purpose other than the object and purpose of the Trust, viz., education.

According to the learned counsel, the impugned order rejected the request of the Petitioners for exemption of the property tax, particularly on the following grounds :-

(a) No provision of the Maharashtra Municipal Corporations Act, 1949 grants such tax exemption;

(b) The Petitioner Trust accepts donations;

(c) The Petitioner Trust, though registered with the Charity Commissioner, has not demonstrated that the building of the Trust is used for public charitable purpose under Section 132(1)(b).

9. Mr.Dalal, in support of the claim in the Petition, would place heavy reliance upon the decision of the Hon'ble Supreme Court in the case of *Municipal Corporation of Delhi Vs. Children Book Trust*[1] as well as the decision of the Bombay High Court in *Balkrishna Dharamdas Vora Vs. The Poona*

1 (1992) 3 SCC 390

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Municipal Corporation[2]. Reliance is also placed by him on the decision of the Bombay High Court in *Sindhu Educational Trust Vs. State of Maharashtra & Ors.* (Writ Petition No.2886 of 2013) and a further decision at Nagpur Bench in *Shahbabu Education Society, Patur, Distt. Akola Vs. State of Maharashtra* (Writ Petition No.927 of 2018)

He has also placed before us a compilation of various orders passed by this Court, as heavy reliance is placed upon the decision of the Apex Court in case of *Children Book Trust* (supra).

According to Mr.Dalal, once the certificate is issued in favour of Petitioner No.1, certifying that no taxes are/shall be levied upon the Trust, being an educational institution, it had legitimate expectation that it shall not be subjected to any tax.

In addition, Mr.Dalal would place reliance upon the Constitution Bench Judgment in the case of *T.M.A. Pai Foundation & Ors. Vs. State of Karnataka & Ors.*[3] as well as the decision in the case of *Isalamic Academy of Education & Anr. Vs. State of Karnataka & Ors.*[4] to demonstrate his primary submission as to whether education *per se* is charitable purpose. He would also invoke the principle laid down by the Hon'ble Apex Court in *Modern Dental College and Research Centre & Ors. Vs. State of Madhya Pradesh & Ors.*[5]

Some significant decisions from the Hon'ble Apex Court, dealing with 'education' under the Income Tax Act are also relied upon by him and this include the following decisions :-

(a) *The Sole Trustee Lok Shikshana Trust Vs. The Commissioner of Income Tax, Mysore*[6]*;*

2 1963 (65) Bom L.R. 119
3 (2002) 8 SCC 481
4 (2003) 6 SCC 697
5 (2016) 7 SCC 353
6 (1976) 1 SCC 254

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(b) Assistant Commissioner of Income Tax (Exemptions) Vs. Ahmedabad Urban Development Authority[7]

(c) New Noble Educational Society Vs. Chief Commissioner of Income Tax 1 & Anr.[8]

10. The learned counsel Mr.Ganbavale, in response to the submissions of Mr.Dalal, by relying upon the affidavit, would raise a preliminary objection about the maintainability of the Writ Petition in the wake of an alternative and efficacious remedy in form of statutory appeal being available. He would make a sincere request to the Court that the Petitioners, by bypassing the statutory mechanism, have approached the Court and this Court would refuse to exercise its writ jurisdiction in the wake of an efficacious remedy being available.

Apart from this, according to him, whether the exemption can be granted in respect of a building or a land under Section 132 of the Corporations Act of 1949 depends on facts and circumstances of each case, as according to him the exemption is not automatic, but has to be determined on the basis of the actual user of the premises, nature of the property and the material placed before the competent authority. It is also his submission that under Section 132(2) the burden lies on the person claiming exemption to show that the property and its user meet the statutory criteria and mere assertion that it is a 'charitable educational institution' with public purpose is not sufficient to claim exemption in terms of the language applied by the legislation. In any case, according to Mr.Ganbavale, the issue of exemption is liable to be examined

7 (2023) 4 SCC 561
8 (2023) 6 SCC 649

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with reference to the relevant assessment period and on the basis of the facts pertaining to the concerned year and the Corporation is entitled to consider such claim on year-to-year and case-to-case basis depending upon the applicable statutory provisions and the factual position emerging in the relevant period. Since, the Petitioners have not invoked the statutory process for claiming exemption for the relevant period, according to him, the challenge to the demand of tax raised by the Corporation and the claim for exemption without exhausting the statutory remedy shall not be entertained by this Court, and according to him, this Court will not exercise its extra ordinary writ jurisdiction, when an alternative remedy is available and also the Petition involves several disputed facts and there cannot be a permanent exemption granted in favour of the Petitioners as what is prayed.

Since the learned Advocate General was requested to address on the said issue, Mr.Ganbavale submits that he would like to adopt the said submissions.

11. We have also heard the learned Advocate General representing the State of Maharashtra, who marked his appearance on our request. He drew a distinction between the educational institution, which carry out its functions for charitable purpose, which finds mention in Section 9 of the Maharashtra Public Trusts Act. Inviting our attention to the description of 'charitable purpose', according to the learned Advocate General, different clauses should be read *ejusdem* generis and one of the purpose being 'education' must take its colour from the other purposes covered under sub-section (l)

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of Section 9; being relief of poverty or distress or medical relief.

Dr.Sathe would submit that the real test to be applied is, whether the educational activity is carried out as a profit motive or it only carries a charitable purpose. He does not dispute the position that the educational institutions which has a profiteering motive, do not deserve the protection and its status cannot be accepted to be the one of 'charitable purpose'. According to the learned Advocate General, the question, therefore, has to be determined as to whether the income gained from running of the educational institution is strictly used for the purpose of charity or carrying out the very said purpose, viz., imparting education and according to him, if it is not being so done then definitely, even the institutions being run by a public trust like Petitioner No.1, shall not be considered to be a 'charitable purpose' and the benefit under Section 132 of the Corporations Act of 1949 shall not be conferred upon it.

12. We have given our thoughtful consideration to the factual and legal aspect of the issue involved.

The issue that arises for consideration before us is, whether the buildings and lands on which the Petitioner No.1 is running different educational institutions imparting education at different levels are liable for being exempted from general tax levied on buildings and lands under the Corporations Act of 1949. The said provision is to be found in Section 132 and it reads thus :-

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"**132. General tax on what premises to be levied.**—

(1) The general tax shall be levied in respect of all buildings and lands in the City except—

(a) buildings and lands solely used for purposes connected with the disposal of the dead ;
(b) buildings and lands or portions thereof solely occupied and used for public worship or for a public charitable purpose ;
(c) buildings and lands vesting in the Government used solely for public purposes and not used or intended to be used for purposes of trade or profit or vesting in the Corporation, in respect of which the said tax, if levied, would under the provisions hereinafter contained be primarily leviable from the Government or the Corporation, respectively.

(2) The following buildings and lands or portions thereof shall not be deemed to be solely occupied and used for public worship or for a public charitable purpose within the meaning of clause (b) of subsection (1), namely :—

(a) buildings or lands or portions thereof in which any trade or business is carried on ; and
(b) buildings or lands or portions thereof in respect of which rent is derived whether such rent is or is not applied solely to religious or charitable purposes.

(3) Where any portion of any building or land is exempt from the general tax by reason of its being solely occupied and used for public worship or for a public charitable purpose such portion shall be deemed to be a separate property for the purpose of municipal taxation."

13. From the reading of the aforesaid, it is evidently clear that certain types of lands and buildings are exempted from levy of general tax and one of the categories thereof is of "buildings and lands or portions thereof solely occupied and used for a public charitable purpose".

Sub-Section (2), however, has offered a clarification to the effect that the buildings and lands or portions thereof shall not be deemed to be solely occupied and used for public charitable purpose within the meaning of clause (b) of sub-section (1) of Section 132, if in such buildings or lands or

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portions thereof, any trade or business is carried out and if in respect of which rent is derived, whether it is or it is not applied solely for charitable purposes.

14. The term 'charitable purpose' is not defined in the Corporations Act of 1949 and for that purpose we have to turn our attention to Section 9 of the Maharashtra Public Trusts Act, 1950 which has categorised charitable purposes and we deem it appropriate to reproduce the said provision :-

> "9. **Charitable Purposes.**
> [(1)] for the purposes of this Act, a charitable purpose includes -
> (1) relief of poverty or distress;
> (2) education;
> (3) medical relief;
> (3A) provision for facilities for recreation or other leisure time occupation (including assistance for such provision), if the facilities are provided in the interest of social welfare and public benefit, and]
>
> (4) the advancement of any other object of general public utility, but does not include a purpose which relates-
> [4][* * *]
> (b) exclusively to religious teaching or worship."

Sub-section (2) of Section 9 is also very pertinent to note, as it provides an indicator about the facilities being provided in the interest of social welfare as contemplated under clause (3A) of sub-section (1) of Section 9 and it reads thus :-

> "[(2) The requirement of this section that the facilities are provided in the interest of social welfare shall not be treated as satisfied, unless-
> (a) the facilities are provided with the object of improving the conditions of life for the persons for whom the facilities are primarily intended; and
> (b) either-
> (i) those persons have need of such facilities as aforesaid by reason of their youth, age, infirmity or disablement, poverty or social and economic circumstances, or
> (ii) the facilities are to be available to the members of the public at large."

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15. For the purpose of determination of the issue that has arisen before us, it will be necessary for us to read the provisions in the two different statutes conjointly, namely, Section 132 of the Corporations Act of 1949 and Section 9 of the Maharashtra Public Trusts Act.

The exemption of general tax to be levied on buildings and lands or portions thereof must satisfy two specific criteria as per clause (b) of sub-section (1) of Section 132 viz. (a) solely occupied for charitable purpose; and (b) used for public charitable purpose.

The said provision contemplates two factors, namely, occupation of the buildings and lands or portions solely for public charitable purpose and its use for public charitable purpose. In case of buildings or lands or portions thereof where any trade or business is carried out then as per sub-section (2) such buildings or lands or portions thereof shall not be deemed to be solely occupied and used for a public charitable purpose. It is the pleaded case of the Petitioners that the premises through which the educational institutions are run by the Trust are solely occupied and used for charitable purposes and, therefore, clause (b) of Section 132 of the Corporations Act of 1949 clearly exempts it from payment of property tax and this call for testing.

16. The Petitioners have placed heavy reliance upon the Judgment of the Hon'ble Supreme Court in *Children Book Trust* (supra) and we have perused the said pronouncement in the backdrop of the provisions of the Delhi Municipal Corporation Act, 1957 and in specific Section 115(4)(a) as

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regards the imposition of general tax in respect of lands and buildings. The said statute also exempted lands and buildings occupied and used by a society for 'charitable purpose'.

While determining the conditions of applicability of exemption, the Hon'ble Apex Court emphasized that the dominant object of a society must be charitable and not to earn profit and secondly, the society must be 'supported' wholly or in part by voluntary contribution.

In the facts of the case, it was noted that on scrutiny of the income and expenditure account of the school, it is reflected that the activity which was being carried out by the society i.e. running of school generated positive income from year-to-year and the fees charged and the donations received by the society could not be treated as voluntary, as they were all forced on students/parents and the school was contributing various amount to the society. Observing that the mere fact that the society was not distributing profit or was applying the profits earned from running of a school on construction of school building was not considered enough for claiming exemption, but it was necessary to demonstrate that the society was supported wholly or in part by voluntary contributions and if the school was generating income for the society and no amount was spent by the society on the school, it was concluded that the society was being run on commercial lines and, therefore, not entitled for exemption.

17. The pronouncement came in the backdrop that the society, *Children Book Trust*, registered under the Societies Act, was served with a notice by the respondent-Corporation

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that the rateable value of the building should be revised and on 01/02/1973, the Deputy Assessor and Collector of the Corporation revised the value of the property and enhanced it to Rs.16,29,750/-. The Deputy Assessor and Collector held that the Trust had not proved its charitable character and the user of the property did not go to prove that it was used for charitable purpose and, therefore, cannot receive tax exemption.

Aggrieved by this order, a writ petition under Articles 226 and 227 of the Constitution was filed before the Delhi High Court, wherein it was contended that the Trust was covered by Section 115(4) proviso of the Delhi Municipal Corporation Act, 1957, which exempted the buildings from payment of general tax, if exclusively occupied and used by a society for charitable purpose.

The learned Single Judge allowed the writ petition and held that it would be entitled to claim total exemption for the payment of tax under Section 115(4) for all the portions occupied by it except the one which is occupied by the press i.e. the basement area for which a monthly rental value has been assessed. Even from this rental value, the Trust was entitled to claim exemption in the proportion of the income accruing to it from publication of children books etc.

While setting aside the impugned order, matter was remitted to be disposed of in accordance with the observations made therein.

18. Aggrieved by the Judgment of the learned Single Judge,, an LPA was preferred by the Corporation, when the Division

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Bench held, 'education' cannot be understood in the limited sense of teaching or delivery of lectures and rather acquisition of information or knowledge from whatever source and in any manner has to be regarded as education.

The Division Bench, therefore, held that because of the mandatory provisions of sub-section (5) of Section 115, no part of the premises in occupation of the press in the basement and the area on the ground floor for which monthly rental value was fixed could be exempted from tax. The appeal of the Corporation was, therefore, partly allowed.

It is this finding of the Division Bench, which was challenged by way of Special Leave to Appeal before the Apex Court.

19. On behalf of the appellant-Public Trust, the argument was canvassed focusing upon the provisions of the Delhi School Education Act, 1973 and the rules made thereunder, which contemplated the conditions of recognition to the effect that the society must run the school and such school must maintain its account. The question posed for consideration was whether the society owned the building and the building housed the school and whether it was exempt from tax. Section 115(4) contemplated two principles, namely, the society must be a charitable society and the use of the building must be for charitable purpose. It was urged that if the object is charitable that was enough and it was irrelevant as to how the funds are utilised.

What was harped upon was the statutory setting in which Section 115(4) was to be construed.

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Emphasis was laid upon the Section 4 of the Delhi School Eduction Act, 1973 which prescribed the conditions of recognition and in the statutory scheme itself Section 17(3) made it obligatory for the Manager to file with the Director a full statement of the fees to be levied by the school and the provision also contemplated that no fee shall be levied except with the prior approval of the Director and no fee in excess of the fee specified shall be levied. Apart from this, the Rules were also relied upon, in order to advance the submission that if there is no private gain; and if the society cannot utilise the funds as the Rules under the Delhi School Act state that, as long as there is no profit, it is charitable. It is emphasized that the essential test of a charitable purpose is the destination of the profits and if the profits continue to feed the charity, mere occurrence of profits would not detract from the charitable nature of the enterprise. The proviso under Section 115(4), which prescribed three qualitative tests for identifying charitable societies, was also invoked.

The submission received opposition from the Corporation, by urging that Section 115(4) of the Delhi Corporation Act is a peculiar provision which provides relief to those societies or bodies carrying on charitable support either fully or in part. The proviso was distinguished from other enactments by urging that legislative intent was to narrow down the clauses of exemption. It was urged on behalf of the Corporation that as far as the respondent Book Trust was concerned, it owned the building and part of the building was let out, which received rental income. It was categorically pointed out that the Children Book Trust had an Office,

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Printing Press, Dolls Museum, Library and Singer Institution, and hence urged that to claim the exemption, it must be shown that the society is supported by the voluntary contribution and where the activity of the society generates income to support itself, the society do not depend upon the voluntary contribution and definitely the exemption would be unavailable. It was also urged that the finding that even if it receives a small contribution irrespective of the fact that whether it is able to support or not, is not the correct test and this required a clarification

20. It is in the context of the aforesaid rival contentions, the Apex Court proceeded to decide the issue, in the background of the relevant statutory scheme of the Delhi Municipal Corporation Act, 1957, which according to us, is distinct than the one which is before us in form of Section 132 of the Corporations Act of 1949. Section 115(4) of the Delhi Municipal Corporation Act, 1957 reads thus :-

> "(4) Save as otherwise provided in this Act, the general tax shall be levied in respect of all lands and buildings in Delhi except—
>
> (a)lands and buildings or portions of lands and buildings exclusively occupied and used for public worship or by a society or body for a charitable purpose:
>
> Provided that such society or body is supported wholly or in part by voluntary contributions, applies its profits, if any, or other income in promoting its objects and does not pay any dividend or bonus to its members.
>
> *Explanation*— 'Charitable purpose' includes relief of the poor, education and medical relief but does not include a purpose which relates exclusively to religious teaching;
>
> (b) to(c) * * *
>
> (emphasis supplied)"

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Sub-section (5) and (6) further read thus :-

> "(5) Lands and buildings or portions thereof shall not be deemed to be exclusively occupied and used for public worship or for a charitable purpose within the meaning of clause (a) of sub-section (4), if any trade or business is carried on in such lands and buildings or portions thereof or if in respect of such lands and buildings or portions thereof, any rent is derived."
>
> (6) Where any portion of any land or building is exempt from the general tax by reason of its being exclusively occupied and used for public worship or for a charitable purpose such portion shall be deemed to be a separate property for the purpose of municipal taxation."

It can therefore be seen that after providing exemption under sub-sections(4) and (5), Section 115 categorises cases, which would not be entitled for exemption and sub-section (6) clarify that a part of the building in the occupation of the society may not entitle it for exemption though the other part is clearly exempted.

21. In the wake of the aforesaid, the Apex Court observed thus :-

> "54. By a reading of the above, it is clear that sub-section (4) of Section 115 provides that general tax shall be levied in respect of all lands and buildings except those lands and buildings or part of lands and buildings which are exclusively occupied and used (*i*) for public worship or (*ii*) by society or body for charitable purpose.
>
> 55. The conditions for claiming exemption under sub-section (4) are:
>
> (i) The lands and buildings or portions of lands and buildings, in respect of which exemption is claimed shall be exclusively occupied by a society or a body and used for a charitable purpose.
> (ii) Such society or body must be supported wholly or in part by voluntary contributions.
> (iii) It must apply its profit, if any, or other income for promoting its objects.
> (iv) It must not pay any dividend or bonus to its members."

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22. While considering the case of the appellant society, that it is engaged in running the school, which is recognised as private unaided school, which is being run from the building owned by the society, ultimately the applicability of sub-section (4) of Section 115 of the Delhi Education Act was to be determined.

The Apex Court invoked various provisions of the said Act in form of Section 17(3) as well as 18(3), which read thus :-

> "17(3) The manager of every recognised school shall, before the commencement of each academic session, file with the Director a full statement of the fees to be levied by such school during the ensuing academic session, and except with the prior approval of the Director, no such school shall charge, during the academic session, any fee in excess of the fee specified by its manager in the said statement."
>
> "18(3) In every recognised unaided school, there shall be a fund, to be called the 'Recognised Unaided School Fund', and there shall be credited there to income accruing to the school by way of-
>
> (a) fees,
> (b) any charges and payments which may be realised by the school for other specific purposes, and
> (c) any other contributions, endowments, gifts and the like."

In addition, sub-section (4) of Section 18 was also invoked, which clearly stipulated as under :-

> "(4)(a) Income derived by unaided schools by way of fees shall be utilised only for such educational purposes as may be prescribed; and
>
> (b) charges and payments realised and all other contributions, endowments and gifts received by the school shall be utilised only for the specific purpose for which they were realised or received."

Rule 50 of the Rules framed under the Act was also invoked as it stipulated the conditions for recognition, and reads thus :-

> "61. Rule 50 of the rules framed under this Act stipulates the conditions for recognition. The important conditions for our purpose are—

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> "(i) the school is run by a society registered under the Societies Registration Act, 1860 (21 of 1860), or a public trust constituted under any law for the time being in force and is managed in accordance with a scheme of management made under these rules;
>
> (iv) the school is not run for profit to any individual, group or association of individuals or any other persons; and
>
> (ix) the school buildings or other structures of the grounds are not used during the day or night for commercial or residential purposes (except for the purpose of residence of any employee of the school) or for communal, political or non-educational activity of any kind whatsoever."

In addition to this, there were specific Rules relating to school fund in the form of Rule 172 and Rule 173, which clearly specified as to how the funds would be collected, maintained and expended.

Rule 172 clearly stipulated that no fee, contribution or other charge shall be collected from any student by the Trust or society running any recognised school, whether aided or not and every fee, contribution or other charge collected from any student by a recognised school, whether aided or not, shall be collected by the school and a receipt shall be given for every collection.

Rule 173 prescribed that every school fund shall be deposited in a nationalised bank or a scheduled bank or any post office in the name of the school and only such part of the school fund, as may be approved by the Administrator may be kept in the form of Government securities, whereas the Administrator may allow such part of the fund to be kept as cash in hand.

23. It is in this background, the Apex Court proceeded to consider, "whether education *per se* is a charitable purpose and its application to the appellant society." By referring to

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various authoritative pronouncements, the conclusion is recorded in following words:-

> "76. In view of the above rulings it would be clear that where the predominant object is to subserve charitable purpose and not to earn profit it would be a charitable purpose. However, the argument of the appellant is as per the Delhi School Education Act and the rules framed thereunder, if the society cannot utilise the fund and the school cannot be run for private gain in the absence of any profit, it would be a charitable purpose.
>
> 77. We have already seen that merely because education is imparted in the school, that by itself, cannot be regarded as a charitable object. Today, education has acquired a wider meaning. If education is imparted with a profit motive, to hold, in such a case, as charitable purpose, will not be correct. We are inclined to agree with Mr B. Sen, learned counsel for the Delhi Municipal Corporation in this regard. Therefore, it would necessarily involve public benefit."

24. Very pertinently, the Apex Court in paragraph 82 observed that the municipal general tax is an annual tax and the liability for taxation must be determined with reference to each year that the society is claiming exemption, as it will have to show that it fulfills the conditions for exemption each year. By way of an example, it was stated that if the school for its support, depend on either wholly or in part voluntary contributions in that particular year, it may be exempted but when it do not depend upon voluntary contributions at all or again if the society produces surplus income and excludes the dependence on voluntary contributions, it may cease to exempt. However, the Apex Court also derived a reasonable way of giving effect to the exemption by contemplating that the assessment shall be for a period of five years to ascertain whether the society or body depends on voluntary contributions and at the end of each five year period, the assessing authority could review the position.

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The conclusion of the Apex Court on this point was clearly expressed in the following words :-

> "82. ...In other words, what we want to stress is, where a society or body is making systematic profit, even though that profit is utilised only for charitable purposes, yet it cannot be said that it could claim exemption. If, merely qualitative test is applied to societies, even schools which are run on commercial basis making profits would go out of the purview of taxation and could demand exemption. Thus, the test, according to us, must be whether the society could survive without receiving voluntary contributions, even though it may have some income by the activities of the society. The word "part" mean an appreciable amount and not an insignificant one. The "part" in other words, must be substantial part. What is substantial would depend upon the facts and circumstances of each case."

Thus it was concluded that the test to be applied is not merely qualitative but quantitative as well.

25. One another aspect, which was touched by the Apex Court, is the utilisation of the income in promoting its objects and the financial position was analysed in context of the Delhi School Education Act and the Rules and on factual aspect, from perusal of the extract of income and expenditure accounts of the school, it was noted that the contributions had been made every year to the society, but the Rules nowhere contemplated transfer of funds from the school to the society and, therefore, such contributions could not amount to voluntary contributions. It was, therefore, concluded that the funds are transferred, even calling the contribution from the school to the society, would be nothing more than a transfer to itself since the transfer of funds was found to be in disregard of the Rules and run counter to Rule 177 and, therefore, by no process of reasoning, it could be held that they are voluntary contributions received by the society. This was so observed in the wake of the fact that there is no provision in the Delhi

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School Education Act by which the school is made a separate entity.

Answering the question as to whether the trade or business is carried out within the meaning of sub-section (5), reference was made to sub-section (6) of Section 115, which covered the cases, where a part of the land or building is used for trade or business or for getting rental income. Holding that this part undoubtedly would be subject to tax, the Apex Court noted that if there was another portion of the same lands or buildings where trade or business was carried on and profits are made and are applied to charitable purpose then that portion shall, for the purposes of municipal taxation, shall be deemed to be a separate property, but the other part will be subject to tax. Therefore, it was succinctly observed that this was the idea underlying making a part of the lands or buildings a separate property so that the entire building does not get the exemption and the trade portion shall be subjected to tax and the charity portion receive exemption.

As far as the factual aspects are concerned, it was held thus :-

> "93. Trade or business can be present in both sub-sections (4) and (5) of Section 115. But, if the profits or income of trade or business is devoted to a charitable purpose and no part thereof is distributed among the members as dividends or bonus, then that trade or business is a means to an end. It is charity.
>
> 94. But, if there is a trade or business carried on in a land or building and its profits are not applied to a charitable purpose, sub-section (6) says that that part of the land or building where a trade or business is carried on or from which rent is derived, will be subject to tax.
>
> 95. Applying the above propositions, it would only, at best, make the society running the school a charitable purpose, beyond that it does not strengthen its case as it fails to answer the test that it is supported wholly or in part by voluntary contributions.

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96. We are unable to read down the proviso to utilisation of income and non-payment of dividends to the members as submitted by Mr G.B. Pai."

As far as the civil appeal filed by the Corporation is concerned, though Corporation did not dispute that the Children Book Trust qualified for exemption, and the objection was raised only qua the observations of the High Court to the effect that because of the use of the words 'in part' in the proviso, the society would be entitled to claim exemption provided other conditions are satisfied, if it is able to show that it has received even a small amount of voluntary contribution, the Apex Court did not find any reason to interfere in the said finding and as a result, both the appeals came to be dismissed.

26. On reading of the authoritative pronouncement by the Hon'ble Apex Court in the case of *Children Book Trust* (supra), what apparently distinguishes the finding is the statutory scheme of the Delhi School Education Act, 1973 and in particular, the one contemplating imposition of general tax on lands and buildings. The surrounding provisions in form of sub-sections (5) and (6) of Section 115, clarified that a part of the building in occupation of the society may not be entitled for exemption, whereas the other part may be, a distinction being clearly drawn in regards lands and buildings on portion thereof, which are used for charitable purpose if any trade or business is carried out and those which are exclusively occupied and used for charitable purpose which shall be deemed to be separate property for the purpose of municipal taxation. What is most relevant to note is that for claiming exemption under sub-section (4), the Apex Court carved out following four stipulations :-

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> "(i) The lands and buildings or portions of lands and buildings, in respect of which exemption is claimed shall be exclusively occupied by a society or a body and used for a charitable purpose.
>
> (ii) Such society or body must be supported wholly or in part by voluntary contributions.
>
> (iii) It must apply its profit, if any, or other income for promoting its objects.
>
> (iv) It must not pay any dividend or bonus to its members."

With reference to the explanation being offered as to what would be a charitable purpose, it being stated in an inclusive manner, namely, relief of the poor, education and medical relief, the following questions formulated for consideration as framed in paragraph 56, received answers in the law report :-

> "(i) Whether the society or body is occupying and using the land and building for a charitable purpose within the meaning of sub-section (4)?
>
> (ii) What is the meaning of the expression "supported wholly or in part by voluntary contribution"?
>
> (iii) Whether any trade or business is carried on in the premises within the meaning of sub-section (5)?

27. In our view, the scheme contemplate that the statute before us and in specific, Section 132 is distinct as it does not provide for any further details in contrast to the Delhi School Education Act, where the manner of collections of fees and its utilisation is clearly contemplated. Not only this, under the Rules framed under the Act, when the society or Public Trust is granted registration, a clear stipulation existed that it is not run for profit to any individual, group or association of individuals or any other persons and the school buildings or other structures on the ground are not used for commercial or residential purposes (except for the purpose of residence of

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any employee of the school) or for communal, political or non-educational activity of any kind whatsoever.

Not only this, the Rules also clearly provided guidance that the society shall not collect fees, contribution from any student or any other recognised school run by the society, whether aided or not and it also mandated as to how the school fund shall be maintained. Rule 117 also specifically deal with the utilisation of the fees by prescribing that the income derived by an unaided recognised school shall be first utilised for meeting the pay, allowances and other benefits admissible to the employees of the school. By way of proviso, its utilisation was permitted for the set out educational purposes, namely, (a) award of scholarships to students; (b) establishment of any other recognised school, or (c) assisting any other school or educational institution under the management of the same society or trust by which the first mentioned school is run.

28. In our view, the statutory scheme under the Delhi School Education Act, 1973 is completely distinct as the Act and Rules together provide the manner in which the income generated from a school run by a society, claiming to be a public charitable trust, is to be utilised. The statutory provisions and the Rules do not permit the school to profiteer and while granting recognition itself, a condition is imposed that the Trust or society shall not collect any fee, contribution or other charge from any student and if it is so collected, a receipt shall be passed so that, it becomes accounted. How the fees collected from such recognised school is to be utilised was also clearly carved out and this necessarily contemplate its

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utilisation for meeting the pay, allowances and benefits admissible to the employees of the school and then to be expended towards only education purposes set out in Rule 177.

In this background, it had become easier for the Apex Court to distinguish the two parts of the buildings, which was used for charitable purpose and which was not, as sub-sections (5) and (6) of Section 115 clearly made out distinct cases for applicability of the property tax by the Corporation. However, in the present case, it is conspicuously absent.

However, we find the reliance by Mr.Dalal on the said authoritative pronouncement useful for our purpose, as the Hon'ble Apex Court has also focused upon the aspect as to what would amount to 'Charity', as it proceeded to determine the question, whether education *per se* is a charitable purpose.

The dictum of Lord Macnaghten was specifically reproduced in paragraph 65, which reads thus :-

> "Charity' in its legal sense comprises four principal divisions: trusts for the relief of poverty, trusts for the advancement of education, trusts for the advancement of religion, and trusts for other purposes beneficial to the community not falling under any of the preceding heads. The trusts last referred to are not the less charitable in the eye of the law because incidentally they benefit the rich as well as the poor, as indeed every charity that deserves the name must do, either directly or indirectly."

The Apex Court, therefore, observed that the emphasis underlying the idea of charity involved an element of philanthropy or something derived from pity of early times as being the fundamental of the concept of charity. It is in this context, the Apex Court observed thus :-

> "68. Therefore, an element of public benefit or philanthropy has to be present. The reason why we stress on this aspect of the matter is if education is run on commercial lines, merely because it is a school, it does not mean it would be entitled to the exemption under Section 115(4) of the Act."

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It was thus clearly expressed that if education is being run on commercial lines, merely because it is a school, that would not entitle the society for exemption under Section 115(4).

29. The Apex Court also considered the term 'charitable purpose' with reference to the Indian Income Tax Act and it relied upon the decision in the case of *All India Spinners' Association* and referred to the relevant enunciation of law to that effect :-

> "Section 4(3) of the Indian Income Tax Act gives a clear and succinct definition of 'charitable purposes' which must be construed according to its actual language and meaning. Lord Macnaghten's definition of charity and English decisions on the law of charities have no binding authority on its construction and though they sometimes afford help or guidance, cannot relieve the Indian Courts from their responsibility of applying the language of the Act to the particular circumstances that emerge under conditions of Indian life. The difference in language, particularly the inclusion in the Indian Act of the word 'public' is of importance.
>
> The construction of Section 4(3) is obviously a question of law, but so also is the question what is the real purpose of an Association. The Court must make its decision on the latter point on the basis of the facts found for it, but given the facts the question is one of law. Where the principal fact is the constitution of the Association the true construction of the constitution for finding out its purpose is a question of law.
>
> The words 'general public utility' in Section 4(3) are very wide words. They would exclude the object of private gain, such as an undertaking for commercial profit though all the same it would subserve general public utility."

Another decision relied upon was in the case of *CIT Vs. Surat Art Silk Cloth Association,* when it was noted that 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, but the predominant object of

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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, as the latter should not masquerade under the guise of the former.

It is in the light of this aforesaid clear pronouncement, being conscious of the fact that education has now acquired a wider meaning and because it is imparted in the school, the Apex Court concluded that it cannot be regarded as a charitable purpose and if it is so done with a profit motive, then to accept that it is a case of charitable purpose would not be correct.

30. Therefore, in our view, the ratio laid down by the Apex Court in *Children Book Trust* (supra) will have to be construed not as an absolute proposition permitting the benefit of exemption to buildings which were used for educational purposes, but as we find that a clear demarcation drawn between the building used for educational purposes and the buildings used for profit motive coupled with the provisions in the statute and the rules framed thereunder governing the collection of fees, its maintenance and its utilisation, *Children Book Trust* (supra) is clearly distinguishable with reference to the statutory scheme and Rules, as in the present case, we do not have such benefit as the provision before us in Section 132 for levy of general tax is to be found in the statute pertaining to Corporation, which has power to grant tax and it has granted exemption from general tax in case of buildings which are not only occupied for educational purpose, but are exclusively used for the said purpose only.

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31. A careful reading of the decision in the case of *Children Book Trust* (supra) and the observations made therein would reveal that the issue, whether education *per se* is a charitable purpose, received in-depth consideration and it was concluded that for it being so, it must involve an element of public benefit or philanthropy and the Apex Court specifically noted that if the education is run on commercial lines, merely because it is a school, it definitely would not be entitled for availing the benefit of exemption under Section 115(4) of the Delhi Education Act, which exempted the lands and buildings in Delhi from the payment of general tax except when they are exclusively occupied and used for charitable purpose.

The definition of the term 'charitable purpose' in explanation appended to sub-section (4) of Section 115 is somehow identical to the one which is to be found in Section 9 of the Maharashtra Public Trusts Act, when it is set out that the for the purposes of the Act a charitable purpose includes relief of poverty or distress, education and medical relief. It also include provision for facilities for recreation or other leisure time occupation, if the facilities are provided in the interest of social welfare and public benefit, and the advancement of any other object of general public utility, but does not include a purpose which relates exclusively to religious teaching or worship.

Under the Maharashtra Public Trusts Act, sub-section (2) of Section 9 offered a further clarification as regards clauses (3A) and (4) by prescribing that the facilities are provided in the interest of social welfare are not to be treated as satisfied, unless (a) the facilities are provided with the

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object of improving the conditions of life for the persons for whom the facilities are primarily intended; and (b) either-(i) those persons need such facilities as aforesaid by reason of their youth, age, infirmity or disablement, poverty or social and economic circumstances, or (ii) the facilities are to be available to the members of the public at large.

32. 'Charity' as per Oxford Dictionary is indicative of an organisation that collect money to help people who are poor and sick etc. or to undertake the work that is useful to the society; the money or gifts collected or given to people who are sick etc. As per Cambridge Dictionary, 'Charity' is "an organisation whose purpose is to give money, food or help to those who need it, or to carry out activities such as medical research that will help people in need and not to make profit."

'Charity' is, therefore, indicative of help, especially in form of money, offered free to people who are in need. The Maharashtra Municipal Corporations Act, 1949 do not carry the definition of 'Charity' or 'Charitable Purpose' and necessarily we have to borrow the definition and phraseology 'Charitable Purpose' from the Maharashtra Public Trusts Act, which has clearly set out the import of 'Charitable Purpose'.

In *Children Book Trust* (supra), the Apex Court clarified that as long as a Trust and its activity has the element of public benefit or philanthropy, its purpose shall be accepted to be "charitable purpose', as assistance is given to those who are in need, by either feeding them, providing them clothing, lodging, education and it is only to those class of people, who are unable to secure it on their own on account of poverty or

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lack of resources. It is also held that merely because education is imparted in the school that itself cannot be regarded as charitable object and as early as in 1990s, the Apex Court identified that education has acquired a wider meaning and if education is imparted with profit motive, it cannot be accepted that the society, which is running the school for imparting education, achieves a charitable purpose.

33. Section 132 of the Corporations Act of 1949 with which we are concerned is a provision of levy of general tax on all buildings and lands in the city except the 'building and lands or portions thereof solely occupied and used for public worship or for a public charitable purpose'. If in the buildings or lands or portion thereof any trade or business is carried out or in respect of which rent is derived, whether it is or is not applied solely to religious or charitable purpose, the buildings or lands or portions thereof shall not be deemed to be solely occupied and used for public charitable purpose within the meaning of clause (b) of sub-section (1) of Section 132.

34. The exposition of the principle governing the fundamental right to set up an educational institution and as to whether the private institutions imparting education (aided and unaided) can be subjected to Government Regulations and to what extent, received consideration from the Hon'ble Apex Court on more than one occasion. Another facet of this right, which fell for consideration, was the exercise of this right by a religious or linguistic minority involving Article 30 of the Constitution and the Constitution Bench Judgment in *T.M.A.*

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Pai Foundation & Ors. (supra), examined this issue threadbare qua the right guaranteed under Article 30(1), available to minority institutions.

The said decision received a clarification from the Five Judge Bench as various State Governments and educational institutions understood the majority Judgment in different perspectives, resulting into different statutes/regulations being enacted framed by different State Governments and, therefore, Five Judge Bench in *Islamic Academy of Education & Anr. Vs. State of Karnataka & Ors.*[9] offered certain clarifications. However, it is in *Modern Dental College and Research Centre & Ors.* (supra), the Five Judge Bench juxtaposed the right to freedom of 'occupation' of private unaided and aided minority institutions and this was examined in the background fact that in the field of education, the constitutional goal of imparting education remained pivotal as education was not to be considered purely as an economic activity, but was recognised as a welfare activity aimed at achieving a more egalitarian and prosperous society to bring about social transformation and upliftment of the nation. The concept of welfare of the society was held to apply more vigorously to the field of education as it is only through education, a better society would come into existence creating better human resources which would contribute to socio-economic and political upliftment of the nation.

The right available to run such professional unaided minority and non-minority educational institutions as a part of Article 19(1)(g) was, however, held to be not an absolute right, but subject to reasonable restrictions as in larger public

9 (2003) 6 SCC 697

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interest of the student community as well as with an object to promote merit, achieve excellence and curb malpractices, certain reasonable restrictions were held to be permissible which included admission by holding State held Common Entrance Tests (CET) and by restructuring the fee structure, so as to avoid the evil of unfair practice of granting admission on available seats guided by the paying capacity of the candidates. Though the argument that running of educational activity could be classified as 'profession', received rejection in *Unni Krishnan, J.P. & Ors. Vs. State of A.P. & Ors.*[10], the right of the professional institutions to establish and manage educational institutions was regarded as an 'occupation' befitting the recognition of the right as a fundamental right under Articles 19(1)(g) in *T.M.A. Pai Foundation & Ors.* (supra), as it received recognition as an activity that is carried on resulting in imparting of knowledge to the students, which must necessarily be regarded as an occupation even if there was no element of profit generation.

35. The Five Judge Bench in *Modern Dental College and Research Centre & Ors.* (supra), when recognised the establishment and running of an educational institution as an 'occupation', it declared that it encompass the right to admit students, right to set up a reasonable fee structure, right to appoint staff and right to take action if there is dereliction of duty. However, it was held that the activity definitely cannot be treated as 'business' and it is not at par with other professions, but it is category apart, as education is treated as a noble 'occupation' on 'no profit no loss' basis. Thus, what the

10 AIR 1993 SC 2178

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Apex Court expressed as in early 1990s in *Children Book Trust* (supra) that education if imparted with a profit motive, will lose its characteristic as a charitable purpose and education though is a charity, it may not always remains so, is found to be reflected through the subsequent pronouncements from the Highest Court, when it is accepted that as long as the occupation is not carried out with profit motive, it continue to remain a charity.

36. The learned counsel for the Petitioners has placed reliance upon various decisions with reference to the Income Tax exemption/concession, with reference to the words "other educational institution' within Section 10(22) of the Income Tax Act. In Section 10 of the Income Tax Act, which has prescribed that in computing the total income of a previous year of any person, any income falling within any of the classes shall be excluded and this include clause 22, which reads thus :-

> "(22) any income of a university or other educational institution existing solely for educational purposes and not for purposes of profit."

A series of decisions with the perspective of the Income Tax Act have been relied upon, which include the decision in the case of *Aditanar Educational Institution Vs. Additional Commissioner of Income Tax*[11] as well as the latest decision in the case of *Assistant Commissioner of Income Tax (Exemptions) Vs. Ahmedabad Urban Development Authority*[12]

The case of *Ahmedabad Urban Development Authority* involved Section 2(15) and its proviso as it stood on

11 (1997) 3 SCC 346
12 (2023) 4 SCC 561

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01/04/2016 and the question that fell for consideration as regards the exemption being available vis-a-vis the charitable purpose of advancement of any other object of general public utility (GPU) and conditions for the entitlement of availing this exemption received consideration.

With reference to the provisions existing prior to the amendment and the amendment introduced by the Finance Act, 2015, it was noted that the law on tax exemption on grounds of charitable purpose had been completely transformed by amending the provision in 2008, 2011 and 2015 and in light of the amendments, it was held that the test of charity being driven by a predominant object is no longer a good law and what is to be focused upon is the definition under Section 2(15), though the proviso makes a departure from the previous law and the amendment offered a clarification admitting only such activities in the nature of trade, commerce, business or service, which are in the course of 'actual carrying on' of the GPU object and also a limit being imposed upon its total receipts. The amended provisions, therefore, imposed an embargo to claim the benefit by prescribing that if a 'Charitable Trust' is carrying on any activities in the nature of business, trade or commerce, in the actual course of fulfilling its objective, the income from such business shall not exceed the limit defined in sub-clause (ii) of the proviso. Worth it to note that the term charitable purpose in the Income Tax Act in Section 2(15) reads thus :-

> "2. (15) "charitable purpose" includes relief of the poor, education, medical relief, [preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest. and the advancement of any other object of general public utility:

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Provided that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity:]

[Provided further that the first proviso shall not apply if the aggregate value of the receipts from the activities referred to therein is [ten lakh rupees] or less in the previous year;]"

37. A reading of the decisions relied upon with reference to the Income Tax Act definitely are to be looked at with a completely different perspective and definitely do not assist us, as we have to read the definition of 'charitable purpose' as defined in the Maharashtra Public Trusts Act and what is to be ascertained is the predominant object of running such an institution (school) by the society, which definitely do not carry the profit making motive. As laid down by the Apex Court in *Queen's Educational Society Vs. CIT*[13], the following test deserves an application in the case before us, it being laid before us.

"11. Thus, the law common to Section 10 (23-C) (iii-ad) and (vi) may be summed up as follows:

(1) Where an educational institution carries on the activity of education primarily for educating persons, the fact that it makes a surplus does not lead to the conclusion that it ceases to exist solely for educational purposes and becomes an institution for the purpose of making profit.

(2) The predominant object test must be applied - the purpose of education should not be submerged by a profit-making motive.

(3) A distinction must be drawn between the making of a surplus and an institution being carried on "for profit". No inference arises that merely because imparting education results in making a profit, it becomes an activity for profit.

13 (2015) 8 SCC 47

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(4) If after meeting expenditure, a surplus arises incidentally from the activity carried on by the educational institution, it will not cease to be one existing solely for educational purposes.

(5) The ultimate test is whether on an overall view of the matter in the assessment year concerned the object is to make profit as opposed to educating persons."

38. Petitioner No.1-Trust runs a school and it is the owner of buildings and lands, but for the purposes of claiming exemption from the levy of general tax, it is imperative for it to establish that the buildings and lands or portions thereof are solely occupied and used for a public charitable purpose. Moreover, it is necessary to seek an exemption every financial year and there can be no exemption claimed in a wholesale manner.

Mr. Ganabavale has rightly urged that the Petitioners' claim for exemption is governed by the statutory framework under the Corporations Act of 1949 and the claim is not automatic or of permanent nature, but the burden must be discharged by the person claiming exemption that the property and its user satisfied the statutory criteria. Merely by asserting that the society is established with a charitable purpose and it runs a school and therefrom impart education, and it *per se* do not become a charitable purpose. The Petitioners are duty bound to demonstrate by placing on record appropriate material that the premises in question qualify for exemption in terms of the statute, and definitely upon such an exemption being claimed, the Corporation is duty bound to consider such a claim on year-to-year basis and on a case-to-case basis, dependent upon what material is placed before it.

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39. We do not agree with the blanket proposition set out by the Petitioners that education *per se* is a charitable purpose.

The Division Bench of this Court in *Sindhu Educational Trust* (supra) had an opportunity to deal with a somehow similar issue when the petitioner claimed to be entitled to exemption from payment of general tax under the provisions of Section 132 and what was involved was Plot No. 84 at Pimpri Colony, Pimpri, Pune and the building standing thereon, where the petitioner society was running an unaided school and the petitioner did not take any donation for grant of admission, but claimed that by utilising the fees collected from the students, the school was being run.

When a notice of demand was served on the petitioner and property tax was demanded for the year 2012-13, the petitioner sought exemption by invoking clause (b) of sub-section (1) of Section 132.

The Division Bench appreciated the scheme of the Corporation and in specific, Section 132 read with Section 128 of the Corporations Act of 1949, where the property tax included water tax, water benefit tax, sewerage tax, sewerage benefit tax, general tax, education cess, street tax etc.

40. The Bench noted that the Corporations Act of 1949 does not define 'public charitable purpose ' and reference was made to the decision in the case of *Balkrishna Dharamdas Vora Vs. The Poona Municipal Corporation*[14], when the issue that fell for consideration was, whether the lands or buildings are directly applied for charitable purpose and it was held that every case must be decided on its own merits to ascertain whether the lands or buildings are directly applied for charitable purpose.

14 (1963) 65 BomLR 119

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The observations of the learned Single Judge in *Sant Kanwarram Education & Social Welfare Society & Ors. Vs. Municipal Corporation of City of Amravati*[15] were reproduced, which read thus :-

> "13. In the case of *Sant Kanwarram Education & Social Welfare Society & Others v. Municipal Corporation of City of Amravati*, the learned Single Judge had an occasion to consider the provisions of Section 132 of the said Act of 1949. In Paragraph 12, the learned Single Judge held thus:
>
> "12. Education per se is a charitable purpose. Therefore, even if the school charges a fee, that would be irrelevant. The society must satisfy the following conditions:
>
> (i) That is support by voluntary contributions;
> (ii) applies to its own income to promote its objects; and
> (iii) it does not pay dividend to any other members.
>
> Two classes or societies could be thought of:
>
> (i) Where members receive full value for their contribution.
> (ii) Society for private gain
>
> 14. The learned Single Judge negatived the argument that any transfer of funds by the school to the Trust running the school can be regarded as a voluntary contribution received by the Trust."

The observations of the Division Bench are to be found in paragraphs 19 and 20, which read thus :-

> "19. In the case of *Sant Kanwarram Education and Welfare Society and Others*, the learned Single Judge held that the education per se is a charitable purpose. However, what binds this Court is the law laid down by the Apex Court in the case of *P.C. Raja Ratnam Institution* wherein it was held that merely because education is imparted in the building, that by itself cannot be regarded as a charitable object. The collection of fees from the students enrolled in the school is not sufficient to come to a conclusion that the building in which the school is run is not used for the public charitable purposes. If a school which is not receiving any grant or which is an unaided school collects reasonable amount by way of fees from the students without collecting any donation or any other amount only for the purposes of meeting the expenditure of running the school, the collection of fees would not be a ground to deny the exemption under Section 132 of the said Act of 1949. In a

15 2009(1)Bom.C.R.778

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given case, a school may be collecting an amount by way of fees which is more than what is necessary to meet the expenditure for running the school. If such excess amount is used solely for charitable objects, still benefit of exemption will be available.

20. A Trust which is an owner or a holder of a building where a school is being run as a charitable activity may be conducting several other activities on the other properties. Some of other educational institutions run by the Trust may have an object of earning profit. The Trust may have income from some other properties. The Trust may be receiving donations for its other activities. That is no ground to deny benefits under Section 132 of the said Act of 1949 to the school building. To summarize, whether the exemption can be granted in respect of the building or land under Section 132 of the said Act of 1949 will depend on the facts and circumstances of each case. Several factors will have to be taken into consideration. The use of a land or building per se does not amount to use of the land or building for a public charitable purpose. Under Section 132 of the said Act of 1949, an exemption can be granted only to that portion of the land or building which is exclusively used for the public charitable purpose. Even if a part of the building or land is being used for a public charitable purpose, by virtue of Sub-section (3) of Section 132 of the said Act of 1949, it shall be deemed to be a separate property for the purposes of taxation."

41. In the case before the Division Bench, the impugned order recording that the petitioner was recovering fees, but it according to the Division Bench, was not the sole ground for rejecting the benefit as if it was established that the petitioner is using the fees for the purposes of meeting the expenses of running the school and it is not earning any profit then this factor may not be used to the disadvantage of the Trust. Apart from this, the question of part of the building being used for running a canteen premises, which had been let down by the school, by applying sub-section (3) of Section 132, it was held that the portion of the building which is used exclusively for public charitable activities would have been treated as a separate property.

Recording that the petitioner is involved in several activities and the test of applicability of sub-section (1) of

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Section 132 was, 'whether the building or land was used for public charitable purpose ' and mere existence of larger fixed deposits in the name of the petitioner was held to be not a ground to deny the benefit.

The impugned order was, therefore, set aside and the matter was remanded back for fresh consideration of the Assistant Commissioner as to whether the petitioner is entitled for exemption in respect of the said property or a part thereof for the year 2012-13.

42. Applying the aforesaid principle to the facts before us, according to us, if Petitioner No.1-Trust intends to claim an exemption under Section 132, it is imperative for it to make an application seeking exemption for every financial year and it is imperative for the Corporation to consider the said aspect by examining, whether the building and land or portion thereof is solely occupied and put to use for public charitable purpose, but we do not accept the contention of the Petitioners that merely because the Trust is running a linguistic minority institution, that by itself would entitle it to be exempted because education is one of the fields, which is considered as charitable purpose.

In our view, the position that every educational institution achieves the charitable purpose no longer is the accepted norm, but it will be imperative for the society/the school which imparts education to establish that its buildings and lands or portions thereof are occupied and used for a public charitable purpose, as mere owning of land/building is not sufficient, but it must satisfy the other aspect, namely, that it is solely used for charitable purpose. Any commercial

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activity, being carried out in the said premises should therefore not enjoy the exemption and even if the activity of education is carried out with a profit earning motive, it would then be denuded of the cover of 'charitable purpose' under section 9 of the Maharashtra Public Trusts Act.

On reading of the Petition, we find that the Petitioners have failed to make out such a case as it is observed that the Trust is accepting fees and donations and not giving free education and, therefore, exemption of tax cannot be given to it. We do not find illegality in the demand raised on the Trust and in absence of it staking its claim on year-to-year basis, the impugned order does not call for any interference. While we dismiss the Writ Petition, we vacate the interim order. However, we permit the Petitioner No.1-Trust to claim exemption for the years to come, by filing application to the Corporation, with appropriate material to establish its case of exemption.

Writ Petition is dismissed.

Rule is discharged.

(MANJUSHA DESHPANDE, J.) **(BHARATI DANGRE, J.)**

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