

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 197 of 2004

to

SPECIAL CIVIL APPLICATION No 221 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the concerned : NO  
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

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PALITANA NAGARPALIKA

Versus

STATE OF GUJARAT  
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Appearance:

MR DHAVAL D VYAS for Petitioner No. 1  
MR ARUN OZA, GOVERNMENT PLEADER for Respondent No. 1  
MR NAGIN N GANDHI for Respondent No. 2  
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CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 31/08/2004

CAV ORAL JUDGEMENT

Rule. Shri A.D.Oza, Learned Government Pleader

appears and waives service of rule on behalf of the respondent no.1. Shri Nagin N Gandhi, Learned Advocate appears and waives service of rule on behalf of the respondent no.2 in all these matters. With the consent of the parties, the matters are taken up for final hearing today. As common question of law and facts arise in all these aforesaid matters, they are decided and disposed of by this common judgment.

2. By way of this Special Civil Application, the petitioner - Palitana Municipality has challenged the legality and validity of the order passed by the State Government dated 30.10.2003 in granting exemption to the respondent no.2 trust from payment of education cess w.e.f. 1987-88 considering the Government Resolution dated 24.12.1963.

3. The respondent no.2 in all the matters are Jain Dharmshalas situated at Palitana in District Bhavnagar. The petitioner is the Municipality duly incorporated and constituted under the provisions of the Gujarat Municipalities Act. The petitioner being a local body is claiming to be entitled to collect tax. The respondent no.2 are the public trusts duly registered under the provisions of the Bombay Public Trusts Act, 1950 and all these trusts own and manage Dharmshalas of Palitana. Palitana is a holy town of pilgrimage and all these various trusts provide accommodation to the Jain pilgrims visiting the holy town and holy mountain "Shretunjaya". It is the case of the respondent no.2 that they are not charging any rent from the pilgrims who stay in Dharmshalas. No part of the buildings of Dharmshalas are used for trade or business. The entire building of the Dharmshalas in each case is used for public charitable purpose. It is also the case of the respondent no.2 that the pilgrims have the option to give donation and as per the donations received from the pilgrims, receipts for voluntary donations are issued. It was the case of the respondent no.2 that various Dharmshalas run by the trusts being used for public charitable purposes were entitled to exemption under Notification issued by the State Government under Section 13(3) of the said Act and as their claim of exemption was not accepted by the petitioner Municipality, all the trusts preferred SCA No.2682 of 1987 and other allied matters before this Court. All these group of petitions came to be heard and disposed of by common judgment by the Learned Single Judge (Coram: S.D.Shah, J (as he then was)) and considering the Government Notification dated 24.12.1963 directed the respondent no.2 to make appropriate application to the State Government and the State

Government was directed to decide such application being made within 4 months. Thereafter, considering the observations made in the judgment, all the aforesaid Special Civil Applications were disposed of by common judgment and order dated 17.7.1991. This Court considering the aforesaid notification and considering that, to earn exemption under the said notification, the following ingredients were required to be satisfied:-

- i. Land and building or portion thereof is held or owned by a public trust duly registered under Bombay Public Trusts act, 1950 or by Society registered under the Societies Registration Act, 1860.
- ii. Such land or buildings or portion thereof is solely used for public worship or in the alternative such land or building or portion thereof is used for public charitable purpose.
- iii. Such building or land or portion thereto shall not be deemed to be solely occupied and used for public worship or for public charitable purposes if in such building or land or portion thereof any trade or business is carried on;
- iv. Such building and land or portion thereof shall not be deemed to be solely occupied and used for public worship or for public charitable purpose if any rent is derived for such building or land or portion thereof. Whether such rent is not applied solely to religious or charitable purposes.

4. Considering the aforesaid provisions, the following findings were given by the Learned Single Judge:-

- i. The respondent no.2 herein are either public trust registered under the Bombay Public Trusts Act or they are societies registered under the provisions of the Societies Registration Act, 1860.
- ii. Dharmshalas run by the respondent no.2 is for a charitable purpose and therefore, the second ingredient of the aforesaid notification is satisfied.

It seems that so far as the ingredient nos.3 and 4 are concerned, this Court found that it was not

possible to decide as to whether the trusts are collecting any amount towards rent from the pilgrims or as to whether their case would fully fall within the exemption notification or it would fall within the exceptions to the exemption clauses and therefore, the case of each of the Dharmshala shall have to be separately decided by the State Government by providing opportunity to each dharmshala or public trust to establish the nature of its collection and method and manner in which the amount is being collected and therefore, the petitioners were directed to make an appropriate application to the State Government within four months and the State Government was directed to decide and dispose of the applications for exemption within a period of four months thereafter considering the observations made in the aforesaid judgment.

5. It seems that thereafter, all the respondent no.2 herein Dharmshalas submitted an application before the State Government pursuant to the judgment and order passed by this Court dated 17.7.1991 passed in SCA No.2682 of 1987 and other cognate matters for exemption from payment of education cess on the basis of the Government Notification dated 24.12.1963 and thereafter, the State Government after giving an opportunity to the respondent no.2 trust and the Chief Officer, Palitana Nagarpalika, Palitana and after considering the necessary documentary evidence produced before it, by order dated 30.10.2003, passed an order to grant exemption to all the trusts from payment of education cess from 1987-88 by holding that all the trusts are entitled to the benefit of Government Notification dated 24.12.1963 and they are fulfilling the criteria and the ingredients in the said notification. It is pertinent to note that this Court while passing the judgment and order dated 17.7.1991 in the aforesaid Special Civil Applications has ordered that if the petitioners are held to be entitled to be exempted from payment of education cess by the State Government, the Municipality is directed to refund the amount of education cess to the trust within a period of three months thereafter.

6. Being aggrieved and dissatisfied with the order passed by the State Government dated 30.10.2003 in granting exemption to the respondent no.2 from payment of education cess and to give effect to the said exemption from 1987-88 and directing the petitioner Municipality to refund the amount of education cess recovered from the respondent no.2 trust within a period of three months, the petitioner Municipality had preferred the present Special Civil Applications.

7. Shri D.D.Vyas, Learned Sr. Advocate appearing on behalf of the petitioner Municipality had challenged the legality and validity of the order passed by the State Government dated 30.10.2003, mainly on the following grounds:-

- a. The impugned order passed by the State Government is without giving any opportunity to the Municipality.
- b. Since the main building of the Dharmshala, accommodation is given on payment of rent though it may be termed in any other manner but none of the occupants is given accommodation free of cost and each one of such trusts are required to pay the rent. The respondent no.2 trusts are not entitled to exemption.
- c. A stereo typed order is passed by the State Government for some extraneous reasons and without considering the relevant circumstances and factual data.
- d. In view of the fact that the education cess which was recovered by the petitioner Municipality was returned to the State Government and in turn, the State Government has paid grant to the extent of 95% of education cess recovered through the Municipality for the purpose of running the school for imparting primary education and the expenses are being borne by the Municipality, it is now not possible for the Municipality to refund the amount to the respondent no.2 trust and therefore, the order to refund the amount of education cess to the respondent no.2 from 1987-88 requires to be quashed and set aside.

8. Though this Court has directed the State Government to decide the application submitted by the respondent no.2 within four months from the date of making the application, the decision is taken after a period of 13 years and in the meantime, the Municipality has recovered the amount of education cess and returned the same to the State Government and in turn, the State Government has paid the grant to the Municipality for the purpose of imparting education, it is virtually impossible for the Municipality to refund the amount to the respondent no.2.

9. On the other hand, Shri A.D.Oza, Ld. Government

Pleader and Shri Nagin N Gandhi, Learned Advocates appearing for the respective respondents have supported the order passed by the State Government dated 30.10.2003 granting exemption to the respondent no.2 from payment of education cess. It is submitted that a decision is taken after giving opportunity to the petitioner and the Chief Officer of Palitana Nagarpalika was heard and after considering the documentary evidence produced, a conscious decision is taken by the State Government granting exemption to the respondent no.2 as having found that all the trusts are fulfilling the criteria which is envisaged in the Government Notification dated 24.12.1963. Shri Gandhi, Learned Advocate for the respondent no.2 had submitted that none of the trusts are recovering any rent and the question with regard to the amount which is recovered by the dharmshalas is already considered by the Learned Single Judge in its order dated 17.7.1991 and also covered by the judgement of this Court reported in Umaji Bhuvan Dharmshala Vs. State of Gujarat reported in 22 GLR Pg. 469. He has further submitted that except the bare allegation/statement in the petition to the effect that the respondent no.2 trusts are recovering the rent, the same is not substantiated by the petitioner and it is as vague as it can be. Nothing is on record to the effect that the respondent no.2 trust are recovering the rent. He has further submitted that after considering the evidence on record and having found that the amount which is recovered by the trusts is not rent, the exemption is granted and therefore, requested to dismiss the present Special Civil Applications and to see that the trusts are paid and refunded the amount of education cess by the petitioner which is recovered from the trust. An affidavit in reply is also filed on behalf of the State Government in which it is stated that the decision has been taken pursuant to the order passed by this Court and after giving an opportunity to the trust as well as the Municipality. It is also further submitted that it is not that in all cases, the exemption is granted. It is submitted tha only in those cases in which it is found that the trusts are not recovering any rent, the exemption is granted individually. He has further submitted that in view of the judgment and order passed by this Court in its order dated 17.7.1991, once it is found that the trusts are entitled to exemption from payment of education cess, it is not open for the Municipality to challenge the authority of the State Government and not to refund the amount to the trusts from 1986-87. i.e. the day from the filing of the petitioners and for all these reasons, it was requested to dismiss the present Special Civil Applications.

10. Heard the Learned Advocates for the parties.

11. Under the notification dated 24.12.1963, there is an exemption from payment of tax under Section 12 of the Gujarat Education Cess Act and the class of lands and buildings specified in the said notification dated 24.12.1963 are entitled to exemption from payment of education cess. As per the said notification dated 24.12.1963, the lands and buildings solely used for the purpose connected with the disposal of the dead, the lands and buildings or portions thereof solely used for public worship for a public charitable purpose and held for a public trust registered under the Bombay Public Trust Act, 1950 or for a society registered under the Societies Registration Act, 1960 are entitled to exemption. However, there is an exception also that if the buildings or lands or portions thereof in which any trade or business is carried on and 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 are not entitled to exemption. It is ultimately for the State Government on the basis of the material available produced before it to grant exemption. In the present case, so far as first two ingredients with regard to the public charitable trusts are concerned, there was already a finding given in favor of the respondent no.2 by this Court in its order dated 17.7.1991. There is also a finding given by this Court in its judgment dated 17.7.1991 in the aforesaid Special Civil Applications that if any amount is recovered by the Dharmshalas not compulsorily to any amount is paid by the occupier voluntarily either by way of demolition or by way of maintenance charge cannot be said to be rent. This finding was given by the Learned Single Judge considering the judgment of this Court in the case of Umaji Bhuvan Dharmshala Trust and Others Vs. State of Gujarat reported in 22 GLR. 469. Therefore, the question was required to be decided by the State Government on the basis of the evidence which was to be produced before it whether in an individual case, the amount which is recovered by the Dharmshalas is by way of rent or not and whether all the trusts are fulfilling all the ingredients as envisaged in the Government Notification dated 24.12.1963 or not? On the basis of the material before it, the State Government has now taken a decision and has found that all the trusts are entitled to exemption from payment of education cess under the provisions of the Gujarat Education Cess and the relevant provision. In fact, the Municipality is the agent for the purpose of recovering education cess. The education cess is levied by the State Government and it

is not levied by the Municipality. The Municipality is only collecting education cess on behalf of the State Government and after collecting the same, it is paid to the State Government. Therefore, as such, the Municipality cannot challenge exemption granted by the State Government and even otherwise on the basis of the material on record, it is found that the trusts are the trusts registered under the Bombay Public Trusts Act and are entitled to exemption from payment of education cess, it cannot be said that the decision taken by the State Government dated 30.10.2003 is in way illegal and/or erroneous and/or is arbitrary which requires interference of this Court exercising the powers under Article 226 of the Constitution of India. Therefore, the challenge to the order dated 30.10.2003 fails.

12. So far as the argument on behalf of the petitioner that the petitioner was not given an opportunity is factually incorrect. As found from the order dated 30.10.2003 and the affidavit in reply filed on behalf of the State Government, it is borne out that the petitioner Municipality was given opportunity by the State Government and the Chief Officer was heard by the State Government. There is no counter to the affidavit in reply filed on behalf of the State Government. Under the circumstances, the said argument has also no substance.

13. So far as the contention on behalf of the petitioner that the order dated 30.10.2003 is a stereo type order and therefore, it shows clear cut non-application of mind on the part of the State Government has also not substance. In individual cases, the decision has been taken and even it is borne out from the affidavit in reply that it is not that in all cases, the State Government has granted exemption. In some of the case in which it is found that the trust has either leased the property and recovered the rent, the State Government has also not granted exemption, therefore, there is no substance in the aforesaid argument.

14. From the main Special Civil Application No.197 of 2004, it seems that the challenge to the aforesaid order dated 30.10.2003 is mainly to the direction issued by the Government to refund the amount to the Trust from 1986-87. In fact as ordered by this Court in its order dated 17.7.1991 in the aforesaid Special Civil Applications, it is directed that if the petitioners (trusts) are held to be entitled to exemption from payment of education cess by the State Government, the Municipality is directed to refund the amount of



education cess to the petitioner trust within a period of three months thereafter. That judgement and order dated 17.7.1991 is not challenged by the petitioner Municipality and therefore, it is now not open for the petitioner to make a grievance with regard to refunding the amount. In fact, considering the judgment and order passed by this Court dated 17.7.1991 where now it is found and an order is passed in favor of the respondent no.2 trust that they are entitled to exemption from payment of education cess, the petitioner is required to refund the amount of education cess recovered from the respondent no.2.

15. Shri D.D.Vyas, Ld. Sr. Counsel appearing on behalf of the Municipality has submitted that whatever amount of education cess recovered by the petitioner from the respondent no.2 trust, the petitioner Municipality has already returned the said amount to the State Government and the State Government has in turn paid the grant to the Municipality to the extent of 95% of the education cess recovered by the petitioner and returned by the petitioner Municipality to the State Government and the petitioner Municipality has in fact incurred the expenses towards running the schools for the purpose of imparting education and on payment of salaries to the teachers etc. Under the provisions and policy of the State Government, whatever amount recovered by the Municipality by way of education cess is required to be returned/paid to the State Government and the State Government is paying grant to the Municipality to the extent of 95% of the education cess so recovered for the purposes of running schools, educational institutions for the purpose of imparting education. It is the case of the petitioner Municipality that the amount of education cess was paid to the State Government and the State Government has also paid grant to the petitioner to the extent of 95% of the education cess which is all spent by the petitioner towards the running of the institution and imparting the education. Therefore, the amount which is to be refunded to the respondent no.2 is to be reimbursed by the State Government.

16. Shri A.D.Oza, Learned Government Pleader has submitted that in fact, there is no material on record to show how much amount is spent by the Municipality towards education and the question with regard to reimbursement of the amount which is to be refunded by the respondent no.2 by the State Government is not subject matter of the present Special Civil Applications. Ultimately, the petitioner is to satisfy the State Government with regard to the expenses incurred by them towards the education

from the education grant paid by the State Government on the basis of education cess for which the material and evidence is to be produced by the petitioner before the State Government.

17. Considering the aforesaid facts and circumstances of the case, it will be open for the petitioner Municipality to approach the State Government for the purpose of reimbursement of the amount of education cess which is now required to be refunded to the respondent no.2 trust and produce the evidence before the State Government, the amount which is recovered by way of education cess from the respondent no.2 trusts, the amount of education cess paid/deposited with the State Government, the grant paid by the State Government to the extent of 95% of the education cess to the petitioner Municipality and the expenses incurred by the Municipality towards running educational institutions and the schools for the purpose of imparting education for the purpose of reimbursement of the aforesaid amount of education cess refunded to the respondent no.2 trust and as and when such a material is produced, the State Government is directed to decide the same and consider the question of reimbursing the amount of education cess refunded to the respondent no.2 trust. However, considering the aforesaid facts and circumstances of the case and considering the direction issued by this Court in its judgment and order dated 17.7.1991 in aforesaid group of Special Civil Applications being SCA No.2682 of 1987 and other allied matter, the petitioner Municipality is, at the first instance, required to refund the amount of education cess to the respondent no.2 trust within a period of three months when now it is held by the State Government on the application that all the trusts are entitled to exemption from payment of education cess. Therefore, the request of the petitioner Municipality that they are not liable to refund the amount of education cess recovered from the respondent no.2 cannot be granted and accepted.

18. For the reasons stated hereinabove, all the aforesaid Special Civil Applications are dismissed. The petitioner Municipality is directed to refund the amount of education cess to the respondent no.2 trust w.e.f. 1986-87 as ordered by this Court in its judgement and order dated 17.7.1991 passed in SCA No.2682 of 1987 and other allied matters within a period of three months at the first instance. However, as observed earlier, it should be open for the petitioner to approach the State Government and produce the necessary evidence for the purpose of reimbursement of the aforesaid amount. The

State Government is directed to consider the same in accordance with law and on merits after considering the evidence and the education cess recovered by the Municipality, education cess paid to the State Government, education grant paid to the Municipality to the extent of 95% of education cess and the expenses incurred by the Municipality for the purpose of education and running educational institutions and schools and to take an appropriate decision with regard to reimbursement. With these observations and directions, all these petitions are dismissed. Rule is discharged in all the petitions with no order as to costs.

(M.R.Shah, J)

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