

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

TUESDAY, THE 31ST DAY OF MAY 2016/10TH JYAISHTA, 1938

WP(C).No. 6965 of 2014 (U)

PETITIONER :

QUILON MEDICAL TRUST (REG.NO.221/03),
MEDICITY, UMayANALLOOR, KOLLAM - 691 589,
REP.BY MANAGER - LEGAL SRI.NIZAMUDDIN A.

BY ADVS.SRI.T.M.RAMAN KARTHA
SRI.JOSEPH RONY JOSE
SMT.O.A.NURIYA
SRI.P.E.ISHAQ

RESPONDENT(S) :

1. STATE OF KERALA
REPRESENTED BY THE SECRETARY,
DEPARTMENT OF REVENUE (SPECIAL CELL),
GOVERNMENT OF KERALA, THIRUVANANTHAPURAM,
PIN - 695 001.
2. TAHSILDAR
KOLLAM - 691 013,
(ASSESSING AUTHORITY APPOINTED UNDER S.4 (1)
OF THE KERALA BUILDING TAX ACT, 1975)

R1 & R2 BY SR. GOVT. PLEADER SRI. LIJU V. STEPHEN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 19-05-2016, THE COURT ON 31-05-2016 DELIVERED THE
FOLLOWING:

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APPENDIX

PETITIONER(S)' EXHIBITS :

- EXHIBIT P1. TRUE COPY OF CERTIFICATE DATED 25.1.12 SHOWING REMITTANCE OF RS. 7,47,000/-
- EXHIBIT P2. TRUE COPY OF NOTICE FOR ASSESSMENT DATED 5.1.12 ISSUED BY 2ND RESPONDENT.
- EXHIBIT P3. TRUE COPY OF REPLY GIVEN TO EXHIBIT P2 NOTICE DATED 12.1.12.
- EXHIBIT P4. TRUE COPY OF LETTER DATED 17.1.12 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER.
- EXHIBIT P5. TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DATED 15.02.12.
- EXHIBIT P6. TRUE COPY OF WRITTEN SUBMISSIONS MADE BY THE PETITIONER BEFORE THE 1ST RESPONDENT DATED 15.10.12.
- EXHIBIT P7. TRUE COPY OF NOTICE OF INSPECTION DATED 15.2.13 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER.
- EXHIBIT P8. TRUE COPY OF GOVERNMENT ORDER
NO.സ.ഉ. (സാധാ) നം.364/14/ററ. DATED 18.1.14.
- EXHIBIT P9. TRUE COPY OF RELEVANT EXTRACTS OF THE MINIMUM STANDARD REQUIREMENTS FOR THE MEDICAL COLLEGE REGULATIONS, 1999.
- EXHIBIT P10. TRUE COPY OF THE ORDER DATED 30.7.2014.
- EXHIBIT P11. TRUE COPY OF THE DEMAND NOTICE FOR THE RECOVERY OF THE ASSESSED TAX IN FOUR INSTALMENTS DATED NIL.

RESPONDENT(S)' EXHIBITS :

- EXT. R2(a) TRUE COPY OF THE ASSESSMENT ORDER.

//TRUE COPY//

P.S. TO JUDGE

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A.M. SHAFFIQUE, J.

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W.P. (C) No. 6965 of 2014

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Dated this, the 31st day of May, 2016

J U D G M E N T

Writ petition is filed challenging Ext.P8, an order passed by the Government refusing to grant exemption from payment of building tax to the entire block of buildings constructed by the petitioner wherein a Medical College is functioning under the name Travancore Medical College. Perusal of the impugned order would indicate that the petitioner sought for exemption under Section 3 (1)(b) of the Kerala Building Tax Act on the ground that the building is constructed for educational purposes. The total area of the building is 86250.98m² of which 40,159.30m² is part of Doctors' quarters, incinerator, hospital canteen, mortuary etc,. The Government by the impugned order observed that an extent of 30,303.06m² used as Medical College, 150.49m² used as sewage treatment plant and 343.07m² used as animal house shall stand exempted. In respect of hostel facilities, it was mentioned that assessment would be subject to decision of the Supreme Court in Civil Appeal No.207/2012. However, the hospital space of

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40159.30m², canteen having an area of 96m², incinerator having an area of 89.56m², mortuary having an area of 265.85m² and Doctors' quarters having an extent of 1750.49m² were not exempted.

2. Learned counsel for the petitioner specially refers to a Full Bench judgment of this Court in **Unity Hospital (P) Ltd. v. State of Kerala** (2011 (1) KLT 236), wherein this Court held at paras 8 and 9 as under:

"8. Learned Government Pleader raised the contention that educational institutions, which are running hostels, are charging fees from students, and so long as fees is charged, accommodation provided to students in the hostel is for commercial purpose and such buildings do not qualify for exemption. According to him, if hostel accommodation is provided to students in the hostel building free of cost, probably the building qualifies for exemption under the head "charitable purpose". Under cl.(b) of S.3(1) of the Act, buildings that qualify for exemption are buildings used for religious, charitable or educational purposes or as factories or workshops. Each and every purpose covered by cl.(b) of S.3(1) of the Act are independent and distinct, though some organizations may be involved in different activities all falling under cl.(b). The concept of "free service" is provided only in the explanation

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to the section, which defines charitable purpose which includes relief of the poor and free medical relief. Charity as a concept essentially is service provided to the poor, which excludes commercial motives or profit. What is specifically provided in the explanation is that in order to qualify medical relief as a charitable purpose, medical service should be rendered to patients free of cost. This only means that hospital buildings will get exemption under the head "charity", only if medical service is rendered free in such hospital building. However, the other buildings which qualify for exemption with reference to the purposes referred to in cl.(b) of S.3(1) do not involve any free supply or service. So far as factories and workshops are concerned, those are engaged in production of goods, servicing etc. These are obviously commercial activities supposed to make profit. The legislature, however, has chosen to grant exemption to factory and workshop buildings and the purpose is obviously to promote industrialisation, goods production, generation of employment etc. So much so, S.3(1) (b) of the Act does not limit exemption to buildings, where services are rendered free. In fact, education is a separate head and there is nothing to indicate that in order to claim exemption for a building used for educational purpose, education should be rendered free. Though education is not a business, it involves collection of reasonable tuition fees as well as hostel charges, where accommodation is provided.

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Of course, when education is rendered by way of charity, it has to be free, and so much so, charitable institution can run free educational institutions and such buildings would be exempted both under the heads "charity" as well as "education". However since exemption is available for all buildings used for educational purposes, exemption would be available even if charges are levied from students for coaching as well as for hostel facilities. So much so, we hold that charging of fees from students for providing accommodation in hostels does not stand in the way of educational institutions claiming exemption for the hostel buildings. This Court has held that even parallel colleges or tutorial colleges imparting education to students on payment basis, also qualify for exemption for the buildings owned and used for such purposes by the educational institutions.

9. We are therefore of the view that buildings owned by educational institutions for providing hostel accommodation to students qualify for building tax exemption under cl.(b) of S.3(1) of the Act. However all buildings accommodating students do not qualify for building tax exemption because there are so many lodge buildings constructed by various people around educational institutions which do not have hostel facility, to rent out to students in such educational institutions. Letting out of buildings by private agencies is a commercial activity whether tenants are students or not. In other words, only hostel

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buildings owned by educational institutions for accommodating it's own students in such hostels will qualify for exemption under cl.(b) of S.3(1) the Act."

It is submitted that since the hospital, canteen, mortuary, accommodation for doctors etc., are all part of educational institution, the same are also liable to be exempted.

3. Counter affidavit has been filed by the 2nd respondent supporting the stand taken in Ext.P8 impugned order. It is stated that in so far as the hospital is being run with the chief object of earning profit, it cannot be treated as one for educational purpose. The same is the issue with reference to other installations which are not exempted.

4. Heard learned counsel for the petitioner and the learned Government Pleader appearing on behalf of respondents.

5. The learned Government Pleader emphasized on a judgment dated 21/6/2013 in WP(C) No. 2159/2010 (***Prestige Educational Trust. v. Tahsildar and others***) wherein a learned Single Judge had taken a view that a hospital wherein treatment is given after collecting treatment charges cannot be exempted from payment of building tax under the Act. Reference is also made to a Division Bench judgment of this Court in ***Jubilee***

Mission Medical College & Research Institute v. Government of Kerala (2011 (4) KLT 106).

6. The short question involved in the writ petition is whether the hospital and ancillary facilities could be treated as exempted under Section 3(1)(b) of the Building Tax Act.

7. Section 3(1)(b) reads as under:

“3. Exemptions: (1) *Nothing in this Act shall apply to*
(a) *xxxx*
(b) *buildings used principally for religious, charitable or educational purposes or as factories or workshops.”*

On a bare reading of the above provision, it might appear that a hospital is required for a Medical College and in such circumstances, a hospital may also qualify for exemption. But this aspect has been considered by a Division Bench of this Court in ***Jubilee Mission Medical College & Research Institute*** (Supra), wherein, in an almost similar set of facts, Division Bench considered this aspect of the matter and held at paras 2 and 3 as under;

“2. The second contention raised by the appellant is with regard to claim of exemption for the building in which hospital is run. Even though counsel has

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relied on Division Bench judgment of this court in Sacred Heart Hospital v. Secretary to Government reported in 2011 (2) KLT 15, what we notice is that the Division Bench while deciding the case has not taken into account earlier Full Bench judgment referred above wherein exemption to hospital building was also specifically dealt with by the Full Bench. The Full Bench examined the scope of S.3 (1)(b) of the Act and held that medical relief as a charity incorporated in the Act through an inclusive is only free medical relief. So much so, the Full Bench held that in order to qualify a hospital building for exemption, medical relief for the patients treated in the hospital should be rendered free of cost. In other words, where the hospital is run on chargeable basis, the building does not qualify for exemption under the head "charity" in relation to medical relief which as conceived in the Statute is free medical relief. So much so going by the Full Bench judgment appellant is not entitled to exemption for the hospital building because patients treated in the hospital are charged for the medical service rendered.

3. Counsel for the appellant raised an alternate contention that under the Medical Council Regulation in order to get approval from the Medical Council for starting Medical College, the college should have a hospital attached to it with the prescribed number of inpatient capacity. So much so, the contention raised by counsel is that the hospital attached to Medical College should also be treated as a building used for educational

purpose. According to counsel, going by the very same reason applied by the Full Bench in the above referred decision granting exemption to hostel buildings where students are given accommodation on chargeable basis, the hospital building attached to the Medical College should also be granted exemption as it also caters to the educational needs of the medical students. Government Pleader opposed the claim of the appellant by contending that practical training to medical students is only an incidental activity in the hospital where the essential activity is rendering service. According to Government Pleader, hospital building is granted exemption under the Act only when medical relief is rendered free of cost. We are unable to accept the contention of counsel for the appellant because exemption to a building has to be considered with reference to the principal use of the building. Unless the building is principally used for the purpose for which exemption is provided, building tax exemption is not available. No one can dispute that the principal use of the hospital building is for rendering medical aid to patients, no matter in the course of the same medical students attached as apprentices with the doctors treating the patients get trained. Therefore, the principal use of the hospital building being rendering medical relief to the patients, the category under which exemption has to be considered even to the hospital building attached to Medical College is charitable purpose. The Full Bench has explained in the judgment above referred that medical relief constitutes

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charity within the meaning contained in Explanation to S.3(1)(b) only when it is rendered free of cost. So much so, in our view, exemption from building tax can be granted to a hospital building only when medical relief is granted in the hospital free of cost. Admittedly the appellant's hospital is not rendering free medical relief to the patients treated in the hospital. So much so, exemption was rightly declined by the statutory authorities and upheld by the learned Single Judge. We, therefore dismiss the Writ Appeal on this basis. In the result, Writ Appeal is allowed in part by modifying the judgment of the learned Single Judge to the extent stated above."

Learned counsel for the petitioner however would submit that the issue has been settled by the Full Bench in **Unity Hospital (P) Ltd.** (supra). But it is relevant to note that the judgment in **Unity Hospital (P) Ltd.** (supra) was also considered by the Division Bench in **Jubilee Mission Medical College & Research Institute** (supra).

8. Once the Division Bench has held that a hospital which is not giving any free treatment is liable to pay building tax, I do not think that a different view can be taken in the matter. Same is the situation with reference to hospital canteen, mortuary and Doctors' quarters.

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9. Hence, I do not think that any error has been committed by the Government in taking a view as expressed in Ext.P8.

Writ petition is, hence, dismissed.

Sd/-
A.M. SHAFFIQUE, JUDGE

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P.S to Judge