

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 25.10.2021

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

W.P.No.18116 of 2020 and

WMP.No.22501 of 2020

Christian Medical College Vellore Association,
Ida Scudder Road,
Vellore,
Rep. By Secretary

... Petitioner

Vs.

1.The Government of Tamil Nadu,
Department of Municipal Administration,
Rep. by Secretary to Government,
Chennai – 600 009.

2.The Commissioner,
Vellore City Municipal Corporation,
Infantry Road, Vellore – 632 001.

3.Assistant Commissioner
Zone – III,
Vellore City Municipal Corporation,
Infantry Road, Vellore – 632 001.

4.Zonal Officer,
Zone – III,
Vellore City Municipal Corporation,
Infantry Road, Vellore – 632 001.

.... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to Writ of certiorari mandamus to call for the records in the Impugned Order being Final Demand Notice dt. 09.11.2020 bearing reference NA.KA.NO.338/2013/A1/M-III issued by the 3rd Respondent and quash the same as being illegal and direct the Respondents to consider Petitioner's Representation dt. 02.05.2018.

For Petitioner : Mr.Krishna Srinivasan
For M/s.Ramasubramaniam and Associates

For Respondents : Mr.N.R.R.Arun Natarajan (for R1)
Government Advocate
Mr.Silambannan, Senior Counsel (for R2 to R4)
Assisted by Ms.P.Shanthi, Standing Counsel

ORDER

The petitioner is the Christian Medical College Vellore Association (CMC/institution), a society registered in terms of the Societies Registration Act managing and administering the Christian Medical College and Hospital at Vellore. The challenge in this Writ Petition is to an order passed by the third respondent – Assistant Commissioner, Zone - III of the Vellore City Municipal Corporation, demanding property tax in respect of two buildings owned by the petitioner, i.e., CHAD building and the College building.

2. CMC is an institution that was founded by Late Dr.Ida Scudder in or around late 1800. The daughter of an American Missionary, Dr. Scudder was moved

by the death of three young women during child birth. She trained in medicine in America, graduated as the first woman doctor from Cornell University and returned to India in 1900 to put to work her training in Obsterics and Gynaecology. CMC started as a one bed clinic and realizing the need for trained assistants to support her in the field of health care, the College was started almost simultaneously.

3. The hospital states that it provides free treatment to 40% of its out-patients and 10% of its in-patients and the fee fixation criteria is on the basis of economic viability of the patients and their families. There is no Government aid or grant that is extended for the hospital.

4. Likewise, the College, run as an unaided minority educational institution, does not collect capitation fee and is a prestigious and premier teaching institution in the Country. The fee charged in the college is stated to be subsidized and it is the income generated by the Hospital that funds the subsidized medical education that the college provides. The tuition fee charged per student per year, the affidavit states, is a sum of Rs.3,000/- for Undergraduate course and Rs.450/- for the Postgraduate course.

5. The above history of the institution as narrated above would become relevant in the context of some of the arguments put forth by the petitioner in support of its claim for exemption towards property tax in terms of Coimbatore City Municipal Corporation Act, 1981 (in short 'Act').

6. The inherent merit of the institution was recognized as early as in 1933 in response to a request by it for exemption from property tax levied by the Vellore Municipal Council, R.Conran Smith, the then Secretary to Government issued G.O.No.Ms.2270 L & M Local Self Government Department dated 09.06.1933 accepting the request for exemption. The Government Order (G.O.) is telling in its recognition of the services offered by the institution and I extract the same below:

Local Self Government Department

G.O.Ms.No.2270 L & M

Dated 9th June 1933

*From the Secretary, Missionary, Medical School for Women,
Vellore, dated 24th April 1933.*

Order:-

A representation has been received by the Government regarding the levy by the Vellore Municipal Council of property tax in respect of certain private wards and rooms occupied by the Resident Doctor and the nursing sister of the hospital attached to the school. It is observed that the private wards have been assessed because room rents were levied. Under clause (b) of sub section (1) of section 83 of the Madras District Municipalities Act, 1920, charitable hospitals and dispensaries are exempt from property tax. The Government consider that to qualify for exemption, the hospital as a whole should answer to the description of a charitable hospital and that it is not necessary that each and every building forming part of the hospital should satisfy the above condition. The provision of free treatment to the sick poor should be sufficient to prove the charitable nature of the institution. The fact that well to do persons are required to pay does not necessarily mean that the Institution is not a charitable one. The whole hospital, including the private wards, should therefore be regarded as exempt. The Chairman, Municipal Council, Vellore, is therefore requested to withdraw the demand in respect of the private wards.

2. *As regards the rooms in the upstairs in the administrative block occupied by the Resident Doctor and the Nursing Sister, the Government consider that, as they are occupied by the Doctor and the Nursing Sister, although the occupation may be for the sake of the patients, they are liable to the taxed under the explanation to sub-section (1) of section 83 of the Madras Municipalities Act, 1920, as residential buildings.*

(By order of the Government, Ministry of Local Self Govt.)

*(Sd.) R.Conran Smith
Secretary to Government*

7. The aforesaid G.O. has taken note of the position that the hospital answers to the description of a 'charitable hospital' insofar as it is, primarily, engaged in charitable work. Moreover and importantly, it also recognises that fees were being collected from those who were in a position to pay, but that such collection would not militate against the classification of the institution as charitable. Areas not used for charitable activities per se, such as the Administrative Block of the Hospital were excluded from the purview of the exemption granted.

8. The exemption was reiterated under a Memorandum issued by the Rural Development and Local Administration Department bearing No.110820-F1/61-12 dated 18.02.1963. It appears that in respect of the exemption granted earlier, a demand of property tax was made and the Government directed withdrawal of the demand citing the exemption granted.

9. While this is so, demands came to be raised for the Community Health and Development Department (CHAD) as well as other educational buildings in the college campus, that are, according to the petitioner, part of the institution. CHAD, is a mobile unit and is stated to be engaged in carrying health care to the

villagers and administering medical treatment to deserving cases in far-flung areas. CHAD is thus, an intrinsic part of the institution carrying and extends its good work to outside locations as well.

10. The petitioner was in correspondence with the respondents, pointing out that the institution had been granted an exemption from property tax as early as from 1933 and such exemption had excluded only the administrative block from the grant of exemption. Thus, all portions of the hospital building that were being deployed for treatment purposes should continue to be granted the exemption.

11. Notwithstanding the repeated requests and representations, demands of property tax came to be raised that were challenged in W.P.No.10324 of 2013 and a mandamus sought directing the Commissioner, Vellore City Municipal Corporation to consider the representation of the petitioner for exemption. W.P.No.10770 of 2013 thereafter came to be filed seeking a Certiorari quashing demand of property tax.

12. In the meanwhile, a batch of Writ Petitions (W.P.MD.No.14508 of 2016 etc. batch) had come to be filed by Educational institutions that claimed to be engaged in the dispensation of charity and a learned single Judge of this Court, by his decision dated 22.11.2017, directed those petitioners to make a representation

before the concerned authorities, for consideration and disposal within a fixed time frame.

13. The ratio of the aforesaid order came to be applied in the petitioner's case as well and the W.P.Nos.10324 and 10770 of 2013 came to be disposed by order dated 04.04.2018. The petitioner was directed to make a representation seeking exemption, upon receipt of which, the authorities were directed to consider the same and pass appropriate orders on merits.

14. The petitioner thereafter filed a representation on 02.05.2018 seeking exemption from property tax in terms of Section 123 (e) of the Act, during the pendency of which, demands came to be raised and reiterated time and again, repeatedly. Final Notice dated 06.05.2018 came to be issued by R4 calling upon the petitioner to participate in a group discussion on the question of property tax demands. The petitioner duly appeared through their representatives.

15. Some objections are raised by the petitioner herein to the procedure followed in the disposal of the representation. They would state that the question of grant of exemption and assessment of property tax cannot be the subject matter of a group discussion, wherein several property owners and assesseees would be present and the concept of a group discussion is unknown in such a context.

16. Though it is appropriate that hearing be conducted, particularly when the claim is for exemption, in a personalized manner wherein, the specific property owner is heard and deliberations are conducted between the officials and the assessee/its representatives alone, there is nothing singularly untoward in holding a group discussion, if the officials concerned are in a position to segregate the submissions and deal with the same precisely and in detail. Thus, as far as the procedure is itself concerned, in relation to the holding of a group discussion, this, would not, in my view and by itself, vitiate the impugned order.

17. Ultimately, the impugned order has come to be passed on 09.11.2020 reiterating the demand raised earlier and relating to a period of 10 years from 2011-12 to 2020-2021. The impugned communication styled as 'Final Demand' proceeds on the basis that the petitioner had, in fact, acquiesced to the demands and the petitioner would seriously and strenuously contest this position. The sum and substance of the rejection is that the petitioner collects charges in some case, exorbitant charges, from its patients, and as such, cannot be called a charitable institution.

18. The grant of exemption has to be seen strictly in line with the language of the relevant statutory provision as well as the spirit and intendment of the Act.

I extract below Section 123, to the extent to which it is relevant to decide the issue before me:-

123. General exemption from property tax:- The following buildings and lands shall be exempt from the property tax--

(a).....

(b).....

(c) places used for the charitable purpose of sheltering the destitute or animals; and orphanages, homes and schools for the deaf and dumb, asylum for the aged and fallen women and such similar institutions run purely on philanthropic lines as are approved by the council ;

(d).....

(e) charitable hospitals and dispensaries but not including residential quarters attached thereto;

The moot question is thus whether the petitioner can be referred to as a ‘charitable institution’.

19. The concept of feeding a charity is not one which is alien to philanthropic endeavours worldwide and it is, only those charitable institutions that have the benefit of regular avenues of income, that are in a position to sustain themselves and more importantly, sustain their charitable endeavours.

20. As far as the respondents are concerned, their stand is that the petitioner was duly heard prior to the raising of the final demand and no merit was found in their claim for exemption. They point out that the institution is being run on

commercial basis and deny the claim the hospital provides free treatment to its patients.

21. According to them, fees were being collected on par with private institutions. Though the institution might have been started with laudable objects, they allege that over a period of time, it has come to charge its patients heavily and is also collecting fee for the various courses conducted in the college.

22. The G.O. passed in 1933 was under the Madras District Municipalities Act, 1920 and has no relevance to the present case. The respondents also point out that pursuant to an amendment to the Act in 1994, educational institutions that were earlier exempted from payment of tax were now statutorily required to remit property taxes in respect of their properties.

23. That apart, there is an alternate remedy that is available and the petitioner ought to have filed an appeal before the Chairman, Taxation Tribunal, Vellore City Corporation and ought not to have approached this Court. The arrears are huge and there is no basis whatsoever for the claim for exemption.

24. Per contra, the petitioner reiterates that its predominant object and engagement is charity and 40% of its out-patients and 10% of its in-patients are treated gratis. Only the remaining pay for the treatment received and the fees charged are commensurate and in keeping with the services rendered.

25. In this context, the petitioner cites the decision in *Parivar Seva Sanstha Reproductive Heal Services V. The Commissioner, Corporation of Chennai* (W.P.No.32041 of 2019 dated 29.10.2020), and relies specifically upon the views expressed in paragraph Nos.34 to 36 to the effect that a charity must be fed regularly for it to survive and thrive.

26. The two properties in respect of which exemption is sought are, one, the CHAD, which is part of the hospital and is engaged admittedly in medical work and two, some of the buildings attached to, and part of the College. As far as the CHAD is concerned, I agree with the petitioner that it is entitled to the exemption claimed.

27. It is incumbent upon a charitable institution to find sources to fund its charitable activity. The respondents in their counter state that fees are being collected by the hospital and cite the following illustrations: General new appointment fee – Rs.90/-, General old appointment fee – Rs.65/-, Pregnancy new appointment fee – Rs.1150/- and Pregnancy old appointment fee – Rs.210/-.

28. I see nothing untoward in this, either in the collection of the fee itself or the quantum, as such fees, according to the petitioners, are being collected from sections of the Society, who can well pay for the same. There is nothing in the counter to meet or dispute the specific averment of the petitioner that the poorer

and weaker sections of the society are being offered medical services, free of charge.

29. Evidently, it would be impossible to sustain the charity by way of free medical services, if there were no revenue streams, which in this case are provided by those patients who are in a position to pay. Thus, the mere fact that some patients are being charged a fee must not, in my view, stand in the way of the petitioner's status as a charitable institution.

30. I reiterate the view expressed by me in *Parivar Seva Sanstha* (supra), for which purpose, I extract the following three paragraphs:

'34. Though profit earning should not be the dominant object of the institution, there is no bar to it being a mere incident of its operations. To hold that there should be a bar on the earning of profits would only serve to make the institution unviable. The provision for exemption in the Delhi Act specifically provides for this situation in the imposition of the condition that 'such society is supported wholly or in part by voluntary contributions, (and) applies its profits, if any, or other income in promoting its objectives and does not pay any dividend or bonus to its members'. The Madras enactment does not employ the same phrase and extends the exemption to all 'charitable hospitals and dispensaries but not including residential quarters attached thereto'. However, the use of the word 'charitable' would necessitate an examination of established parametres such as the following, among other tests: (i) the activity engaged in by the entity in question (ii) whether such activity is generally understood to fall within the ambit of public service and social good (iii) whether other statutory authorities, including income-tax have recognised the petitioner as being engaged in, and rendering charitable activities (iv) whether the dominant object of the institution is to render service or to earn profit (v) if the activity does generate profit or the institution earns income from other sources, is such profit/net income ploughed back into the institution or diverted to other avenues/individuals.

35. *Prosperity is not the preserve of a commercial institution alone. It is probable, possible and indeed necessary that even charitable organisations including hospitals should be prosperous as increased prosperity will only lead to greater levels of charity and service. The deployment of the profits must however, be a pre-condition to the grant of the exemption. The argument to the effect that the mere existence of profit would debar an institution from claiming exemption, thus, stands rejected. What is necessary is for the respondents to have an appropriate mechanism to test and ensure that such profit if and when earned, is, in fact, utilized to subserve the charitable objectives of that institution.*

36. *The concept of 'feeding the charity' assumes importance and relevance as unless the institution is well-fed, it will wither and die, and along with it, the activity of charity. This cannot be the intention of the policy makers. It must therefore be the objective of every enactment to ensure that institutions engaged in charity are nurtured, of course, with all protocols in place to prevent abuse/misuse of the exemption granted and the surplus earned, if any. In my view, Section 101 of the Act should be interpreted with this end in mind.'*

31. The wisdom that finds place in the 1933 Government Order, which has been extracted at paragraph No.5 above is woefully absent in the assessment proceedings presently undertaken. In order to satisfy myself in regard to the fee collected and deployment of the revenue, I had called for the Annual Reports of the institution.

32. Reports for the periods 2018-2019 and 2019-2020 have been circulated along with statement of costs and statements indicating the break-up between the charitable work and the revenue generating work that the institution is engaged in. Orders of assessment as well as Certificate under Section 80 G of the Income Tax Act, 1961 have also been placed on record.

33. Suffice it to say that the argument advanced by the respondents, that only an institution which has no revenue at all can be a charitable institution, is untenable as it ignores ground realities. Assuming that an institution was bereft of all revenue sources, such institution would itself be in a need of charity, and cannot hope to do charity.

34. Though the grant of exemption is one that should be considered by the original authority and not a question in which the Court would be inclined to intervene under Article 226, in this case, I believe that such intervention is justified. It is not in dispute that the hospital has been granted the benefit of exemption continuously from 1933. It is also not in dispute that the CHAD is part of the hospital and is engaged in charity and medical relief, both in the hospital and, as an extension to the neighbouring committees as well. In the aforesaid facts and circumstances, I see no justification whatsoever to exclude the CHAD from the ambit of exemption from property tax and quash that portion of the impugned order denying such relief.

35. Coming to the claim of exemption qua the buildings comprised in the educational institution, the Statute as it stands post amendment in 1994 militates against such claim, amendment, Section 123(c), reads as follows, the portion in brackets having been deleted as a result of the amendment:

123. General exemption from property tax:- The following buildings and lands shall be exempt from the property tax--

(a).....

(b).....

(c) (Buildings used for educational purpose including hostels attached thereto and places used for the charitable purpose)

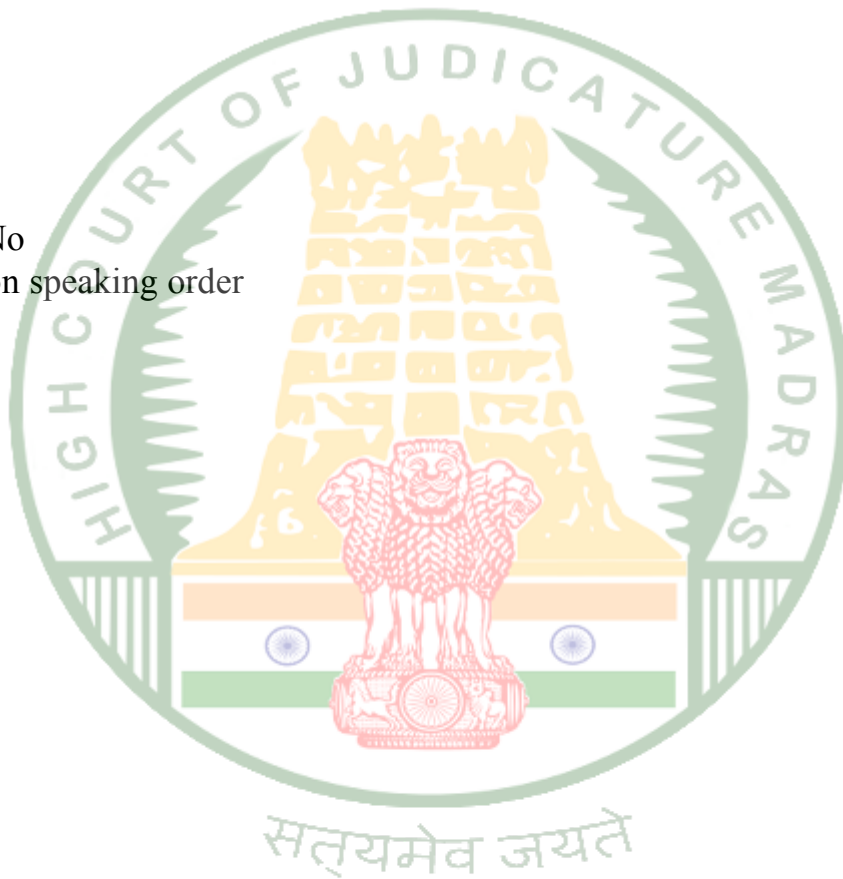
36. The amendment does, in my view, overlook the charitable nature of the activity undertaken by a teaching college. It perhaps was intended to address prosperous educational institutions run on profit motive. A teaching institution, by definition, focuses on the dispensation of education in the arena of medicine, both subjects constituting public duty. The fee structure in the college is stated to a sum of Rs.3000/- per annum only and no other charges are collected. The expenditure is wholly met from out of the fee collection from the hospital, which also treats a section of the society gratuitously. Thus, a distinction must be made between a teaching hospital which is service oriented and other Educational institutions where the dominant object is profit. I would urge that the powers that address this issue appropriately to ensure that genuine and bonafide teaching institutions are provided with relief in this regard so as to enable them to deploy available funds for the core activities.

37. In the light of law as it stands now, the petitioner is not entitled to exemption from property tax in regard to the college buildings. The impugned order is upheld to this extent.

38. This Writ Petition is partly allowed. No costs. Connected Miscellaneous Petition is closed.

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Index: Yes/No
Speaking/Non speaking order

25.10.2021



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DR. ANITA SUMANTH, J.

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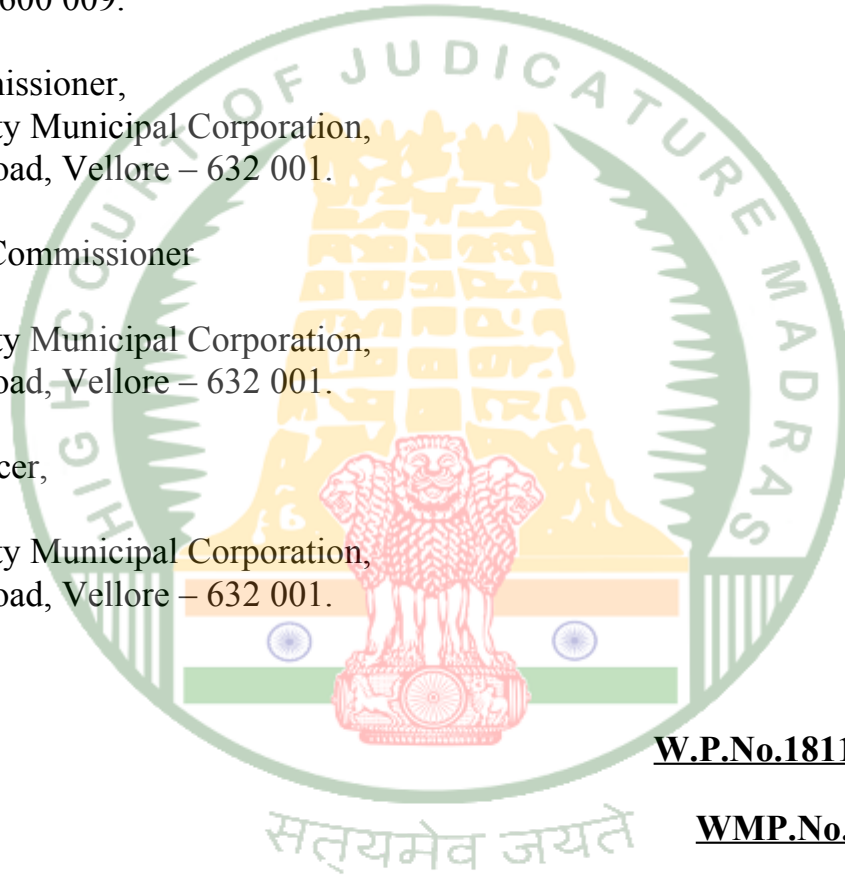
To

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