
(1989) 12 KL CK 0006

High Court Of Kerala

Case No: O.P. No. 9714 of 1989 F

V. Vijayakumaran Nair

APPELLANT

Vs

The Corporation of
Calicut

RESPONDENT

Date of Decision: Dec. 18, 1989

Acts Referred:

- Kerala Municipal Corporation Act, 1961 - Section 101, 103(1)
- Kerala Panchayat Act, 1960 - Section 72(1)
- Taxation and Finance Rules - Rule 24

Citation: (1990) KLJ 291

Hon'ble Judges: G. Viswanatha Iyer, J

Bench: Single Bench

Advocate: K.P. Sreekumar, for the Appellant; K.P.G. Menon, for the Respondent

Judgement

Viswanatha Iyer, J.

Petitioner is running an institution recognised by both the Central and State Governments, in which he is imparting instruction in various courses of study, namely Draftsman (Civil), Radio and Television Engineering. Electronics and Communication Engineering and Wireman Licence. The National Council of Vocational Training has granted permanent affiliation to the course of Draftsman (Civil). The Regional Directorate of Technical Education, Calicut has granted provisional recognition to the other three courses for the years 1989-90 and 1990-91. The Licensing Board, Trivandrum has also accorded recognition for the Wireman Licence course conducted in the institution. These facts are evidenced by Exts. P-1 to P-3.

2. All these courses are conducted in building No. 17/1779A of the Corporation of Calicut, belonging to the Petitioner. Petitioner claimed exemption for the building from payment of the property tax levied u/s 101 of the Kerala Municipal Corporations Act 30 of 1961 (the Act), claiming that it is one used for educational purposes and hence falling u/s 103(1)(cc)

of the Act. His request for exemption was however, declined by the proceedings Ext. P-6 of the Respondent Corporation for the reason that the Petitioner's institution was a private one, outside the pale of control of Government. Prior to Ext. P-6, Petitioner had been called upon to make payment of the tax by the notice Ext. P-4. It is in these circumstances that the Original Petition was filed with a prayer to quash Ext. P-6.

3. The Respondent entered appearance and filed counter-affidavit in which the case mainly is the availability of an alternate remedy under Rule 24 of the Taxation and Finance Rules appearing in Schedule II of the Act, by way of appeal before the District Court, to challenge this proceeding. The correctness of Ext. P-6 for the reasons stated therein is also reiterated.

4. I am unable to agree with the Respondent's contentions. The only condition required to attract the exemption u/s 103(1)(cc) of the Act is that the building in question should be used "for educational purposes". Education is the process of training and developing knowledge, skill, mind, character etc., especially by formal schooling, teaching or training (Webster: New World Dictionary). The knowledge imparted in the Petitioner's institution is intended to develop the skill of the students to make them fit for carrying on the various trades or occupations to which they relate. It cannot therefore, be denied that imparting knowledge in such courses, in the various disciplines referred to above, which have been recognised by the concerned authorities, constitutes education. The building in question, where the courses are conducted, is therefore, one used for educational purposes. There is no stipulation in Section 103(1)(cc) that the educational institution should not be a private one or that it should be on under Government control, to earn the exemption for the building. It is not possible to read these conditions into the provision. So long as there is a genuine educational institution being run in the premises, the building should be held entitled to the exemption. There is no dispute here that there is in fact such an institution being run in the building in question.

5. In the circumstances, the building falls squarely within Section 103(1)(cc) of the Act and is exempt from payment of property tax.

6. A Division Bench of this Court constituted of their Lordships the Chief Justice and Justice Bhaskaran Nambiar dealt with the analogous Section 72(1)(d) of the Kerala Panchayats Act 32 of 1960 in the decision dated December 7, 1987 in Writ Appeal No. 947 of 1987 in these lines :

All that is provided for therein is that all the buildings which are used for educational purposes are exempt from payment of tax, duty or cess, meaning thereby whether the user is for profit or for other purposes is not relevant. The building if used for educational purposes is exempt from tax as pointed out in the above decisions.

The decisions referred to are those in Mathew v. Executive Officer 1984 KLT 310 and Sr. Mariatta v. State of Kerala 1981 KLT 80.

7. The view taken by me is supported by this decision. Since the order Ext. P-6 is one passed for reasons totally foreign to the provisions in Section 103(1)(cc) . I am not inclined to relegate the Petitioner to the alternate remedy provided by the Act.

The Original Petition is therefore allowed, and the proceedings Ext. P-6 are quashed.