AIR 1986 SC 1054 : (1986) 15 ITR 1 : (1986) 1 SCALE 353 : (1986) 2 SCC 391 : (1986) 1 SCR 570

Supreme Court of India

Case No: Civil Appeals No"s. 216 to 218 (NT) of 1973

Commissioner of Income Tax, Andhra Pradesh, Hyderabad		APPELLANT
	Vs	
Andhra Pradesh State Road Transport Corporation, Hyderabad		RESPONDENT

Date of Decision: March 7, 1986

Acts Referred:
Constitution of India, 1950 â€" Article 289(1)#Income Tax Act, 1922 â€" Section 4(3)#Income Tax Act, 1961 â€" Section 11, 11(1), 261#Road Transport Corporation (Amendment) Act, 1959 â€" Section 30#Road T

Citation: AIR 1986 SC 1054 : (1986) 15 ITR 1 : (1986) 1 SCALE 353 : (1986) 2 SCC 391 : (1986) 1 SCR 570

Hon'ble Judges: V. D. Tulzapurkar, J; D. P. Madon, J

Bench: Division Bench

Advocate: O.P. Rana, G.S. Chatterjee, S. K. Dholakia C.S.S. Rao and Raju Ramachandran, for the Appellant;

Final Decision: Dismissed

Judgement

D.P. Madon, J.
The above three Appeals have been filed by certificate granted by the Andhra Pradesh High Court u/s 261 of the income

tax Act, 1961, against the judgment of that High Court in an income tax reference. The Respondnet, the Andhra Pradesh State Road Transport

Corporation, is a Road Transport Corporation established with effect from January 11, 1958, by the State of Andhra Pradesh by a notification

issued u/s 3 of the Road Transport Corporations Act, 1950 (Act No. 64 of 1950) (hereinafter referred to in short as ""the RTC Act""). Prior to the

establishment of the Respondent Corporation road transport in the State of Andhra Pradesh was a department of the Government, being run by

the Government of Hyderabad prior to the formation of the State of Andhra and thereafter by the Government of Andhra Pradesh. During the

whole of this period the income made from road transport was exempt from income tax. After the Respondent Corporation was formed, the

income tax Department took the view that the income of the Respondent Corporation was liable to income tax and assessed the Respondent

Corporation to income tax for the assessment years 1958-59 and 1959-60. The Respondent Corporation thereupon filed a writ petition in the

Andhra Pradesh High Court contending that the property owned by it and the income earned by it were the property and income of a State

exempted from Union taxation under Article 289(1) of the Constitution. This contention was rejected and the writ petitions were dismissed by the

High Court. Appeals filed by the Respondent Corporation in this Court were also dismissed. The judgment of this Court is reported as 277244

After referring to the various provisions of the RTC Act, this Court held:

Far from making any provision which would make the income of the corporation the income of the State, all the relevant provisions emphatically

bring out the separate personality of the corporation and proceed on the basis that the trading activity is run by the corporation and the profit and

loss that would be made as a result of the trading activity would be the profit and loss of the corporation.... When we are deciding the question as

to whether the income derived by the corporation is the income of the State, the provision made by Section 30 for making over to the State

Government the b"ilance that may remain as indicated therein, is of no assistance. The income is undoubtedly the income of the corporation. All

that Section 30 requires is that a part of that income may be entrusted to the State Government for a specific purpose of road development. It is

not suggested or shown such income is made over to the State, it becomes a part of the general revenue of the State. It is income which is

impressed with an obligation and which can be utilised by the State Government only for the specific purpose for which it is entrusted to it.

2. Having failed in its contention that its income was exempt from income tax under Article 289(1) of the Constitution, the Respondent Corporation

filed returns in respect of the assessment years 1960-61, 1961-62, and 1962-63, showing its income as ""Nil"". In respect of the assessment years

1960-61 and 1961-62, which are the subject of Civil Appeals Nos. 216 and 217 (NT) of 1973 before us, it claimed exemption from income tax

u/s 4(3)(i) of the Indian income tax Act, . 1922 (hereinafter referred to as ""the 1922 Act""). In respect of the assessment year 1962-63, which is

the subject of Civil Appeal No. 218 (NT) of 1973 before us, it claimed exemption u/s 11 of the income tax Act, 1961 (hereinafter referred to as

the 1961 Act""). The Respondent Corporation''s claim for exemption was rejected by the Income tax Officer, Company Circle, Hyderabad. The

appeals filed by the Respondent Corporation were allowed by the Appellate Assistant Commissioner of income tax, D-Range, Hyderabad, but the

appeals filed by the Department before the income tax Appellate Tribunal, Hyderabad Bench, were allowed and at the instance of the Respondent

Corporation the Tribunal by a common order made in all the three appeals before it stated a case and referred the following question of law to the

High . Court:

Whether, on the facts and in the circumstances of the case, the assessee''s income for the assessment years 1960-61 and 1961-62 was exempt

from income tax u/s 4(3)(i) of the income tax Act, 1922, and for the assessment year 1962-63, u/s 11 of the income tax Act, 1961.

The High Court answered the above question in favour of the Respondent Corporation and against the Department and on an application made by

the Appellant, the Commissioner of income tax, Andhra Pradesh, Hyderabad, granted u/s 261 of the 1961 Act a certificate of fitness for appeal to

this Court.

3. Section 4(3)(i) of the 1922 Act, omitting what is not relevant for our purpose, provided as follows:

(3) Any income profits or gains falling within the following classes shall not be included in the total income of the person receiving them:

(i) Subject to the provisions of Clause (c) of Sub-section (1) of Section 16, any income derived from property held under trust or other legal

obligation wholly for religious or charitable purposes, in so far as such income is applied or accumulated for application to such religious or

charitable purposes as relate to anything done within the taxable territoritories, and in the case of property so held in part only for such purposes,

the income applied or finally: set apart for application thereto:

provided that such income shall be included in the total income-

X X X

(b) in the case of income derived from business carried on on behalf of a religious or charitable institution, unless the income is applied Wholly for

the purposes of the institution and either-

(i) the business is carried on in the course of the actual carrying out of a primary purpose of the institution, or

(ii) the work in connection with the business is mainly carried on by beneficiaries of the institution;

x x x

In this Sub-section "charitable purpose" includes relief of the poor, education, medial relief, and the advancement of any other object of general

public utility, but nothing contained in Clause (i) or Clause (ii) shall operate to exempt from the provisions of this Act that part of the income from

property held under a trust or other legal obligation for private religious purposes which does not enure for the benefit of the public.

4. The material provisions of Section 11(1)(a) of the 1961 Act are as follows:

11. Income from property held for charitable or religious purposes.-

(1) Subject to the provisions of Sections 60 to 63, the following income shall not be included in the total income of the previous year of the person

in receipt of the income-

(a) income derived from property held under trust wholly for charitable or religious purposes, to the extent to which such income is applied to such

purposes in India.

5. Clause (15) of Section 2 of the 1961 Act defines the expression charitable purpose. This definition is as follows:

(15)''charitable purpose'' includes relief of the poor, education, medical relief, and the advancement of any other object of general public utility not

involving the carrying on of any activity for profit.

6. The difference between the 1922 Act and the 1961 Act with respect of the definition of the expression ""'charitable purpose"" was thus stated by

this Court in 289378 :

It is obvious that the exclusionary clause was added with a view to overcoming the decision of the Privy Council in the Tribune''s case (1939) 7

ITR 415 , where it was held that the object of supplying the community with an organ of educated public opinion by publication of a newspaper

was an object of general public utility and hence charitable in character even though the activity of publication of the newspaper was carried on on

commercial lines with the object of earning profit. The publication of the newspaper was an activity engaged in by the trust for the purpose of

carrying out its charitable purpose and on the facts it was clearly an activity which had profit making as its predominant object, but even so it was

held by the Judicial Committee that since the purpose served was an object of general public utility, it was a charitable purpose. It is clear from the

speech of the Finance Minister that it was with a view to setting at naught this decision that the exclusionary clause was added in the definition of

''charitable purpose''. The test which has, therefore, now to be applied is whether the predominant object of the activity involved in carrying out the

object of general public utility is to subserve the charitable purpose or to earn profit. Where profit-making is the predominant object of the activity,

the purpose, though an object of general public utility, would cease to be a charitable purpose. But where the predominant object of the activity is

to carry out the charitable purpose and not to earn profit, it would not lose its character of a charitable purpose merely because some profit arises

from the activity. The exclusionary clause does not require that the activity must be carried on in such a manner that it does not result in any profit.

It would indeed be difficult for persons in charge of a trust or institution to so carry on the activity that the expenditure balances the income and

there is no resulting profit. That would not only be difficult of practical realisation but would also reflect unsound principles of management.

7. The position as stated above in the above case was reiterated by this Court in 289206 In that case this Court said:

It may be noticed that whereas any object of general public utility was included in the definition of ''charitable purpose'' in the 1922 Act, the

present definition has inserted the restrictive words ''not involving the carrying on of any activity for profit'' which qualify or govern the last head of

charitable purpose. In 285081 , a case decided by this Court under the 1922 Act, where the restrictive words were absent, this Court laid down

that if the primary or dominant purpose of a trust or institution was charitable, any other object which by itself might not be charitable but which

was merely ancillary or incidental to the primary or dominant purpose would not prevent the trust or institution from being a valid charity. After the

addition of the restrictive words in the definition in the 1961 Act, this Court in 289378 affirmed that the aforesaid test of primary or dominant

purpose of a trust or institution still holds good, that the restrictive words qualify ''object'' and not the advancement or accomplishment thereof and

that the true meaning of the restrictive words was that when the purpose of a trust or institution was the advancement of an object of general public

utility it was that object of general public utility and not its accomplishment or carrying out which must not involve the carrying on of any activity for

profit. And, applying these tests, trading bodies like Andhra Chamber of Commerce and Surat Art Silk Cloth Manufacturers Association have

been held to be institutions constituted with a view to advance an object of general public utility because their primary or dominant purpose was to

promote and protect industry, trade and commerce either generally or in certain commodities, even though some benefit through some of their

activities did accrue to their members which was regarded as incidental and this Court held that the income derived from diverse sources by these

institutions (rental income from property in the case of Andhra Chamber of Commerce and income from annual subscriptions collected from its

members and commission of a certain percentage of the value of licences for import of foreign yarn and quotas for purchase of indigenous yarn

obtained by the assessee from its members in the case of Surat Art Silk Cloth Manufacturers Association was exempt from tax liability u/s 11 of

the Act.

8. It was contended on behalf of the Appellant that the Respondent Corporation was not entitled to any exemption as claimed by it because its

activities were carried on for profit as shown by Section 22, 23 and 28 of the RTC Act. In fairness to learned Counsel for the Appellant it must be

stated that in view of the judgment of the Judicial Committee of the Privy Council in In re The Trustees of The "Tribune" (1939) 7 ITR 415 . in

which it was held that where an activity carried on with the object of general public-utility did not cease to be charitable in character even though it

was carried on on commercial lines with the object of earning profit, the concentration of the attack as on the exemption claimed in respect of the

assessment year 1962-63 which was covered by the 1961 Act. The above contention entails an examination of the relevant provisions of the RTC

Act. The objects for which a Road Transport Corporation is established by a State Government are set out in Section 3. These objects are:

(a) the advantages offered to the public, trade and industry by the development of road transport;

(b) the desirability of co-ordinating any form of road transport with any other form of transport; and

(c) the desirability of extending and improving the facilities for road transport in any area and of providing an efficient and economical system of

road transport service therein.

These were, therefore, the objects for which the Respondent Corporation was established. Section 18 reiterates the above objects. It provides as

follows:

18. General duty of Corporation:

It shall be the general duty of a Corporation so to exercise its powers as progressively to provide or secure or promote the provision of an

efficient, adequate, economical and properly co-ordinated system of road transport services in the State or part of the State for which it is

established and in any extended area:

X X X X

Section 19 enumerates the powers of a Road Transport Corporation. They include the power to operate road transport services in the State and

in any extended area and to provide for any ancillary service. Section 22 provides as follows:

22. General principle of Corporation''s finance:

It shall be the general principle of a Corporation that in carrying on its undertaking it shall act on business principles.

Under Sub-section (1) of Section 23, the capital of a Road Transport . Corporation is to be provided by the Central Government and the State

Government in such proportion as may be agreed to by both the Governments. Under Sub-section (2) of Section 23, where the capital of a Road

Transport Corporation is not provided by the Central Government or the State Government, such Corporation may raise such capital by the issue

of shares as may be authorized in that behalf by the State Government. Under Sub-section (3) of Section 23, the shares are to be subscribed by

the Central Government, the State Government and other parties including persons whose undertakings have been acquired by the Corporation

and under Sub-section (6) a Corporation may at any time, with the previous approval of the State Government, redeem the shares issued to the

other parties in such manner as may be prescribed. u/s 24, if after the issue of such shares, the Corporation requires additional capital, it may, with

the previous approval of the State Government, raise such additional capital by the issue of new shares and the provisions of Section 23 apply to

such issue. u/s 25, the shares of a Road Transport Corporation are to be guaranteed by the State Government both as to the payment of the

principal and the annual dividend at such minimum rate as may be fixed by the State Government by notification published in the Official Gazette at

the time of issuing the shares. Section 26 authorizes a Road Transport Corporation, with the previous approval of the State Government, to

borrow money in the open market for purposes of raising its working capital or for meeting any expenditure of a capital nature. Section 27

provides that every Road Transport Corporation is to have its own fund and all receipts of the Corporation are to be carried thereto and all

payments by the Corporation are to be made therefrom, and that except as otherwise directed by the State Government, all moneys belonging to

that fund are to be deposited in the Reserve Bank of India or with the agents of the Reserve Bank of India or invested in such securities as may be

approved by the State Government. u/s 28 where the Capital of a Road Transport Corporation is provided by the Central Government and the

State Government, the Corporation is to pay interest on such capital and where the Corporation has raised its capital by issue of shares it is to pay

dividend on such shares at such rate as may, from time to time, be fixed by the Corporation, subject to any general limitations which may be

imposed by the State Government in consultation with the Central Government, and such interest and dividend are to be deemed to be a part of

the expenditure of the Corporation. Section 30 provides as follows:

30. Disposal of net profits.

After making provision for payment of interest and dividend u/s 28 and for depreciation, reserve and other funds u/s 29, a Corporation may utilise

such percentage of its net annual profits as may be specified in this behalf by the State Government for the provision of amenities to the passengers

using the road transport services, welfare of labour employed by the Corporation and for such other purposes as may be prescribed with the

previous approval of the Central Government, (and out of the balance such amount as may, with the previous approval of the State Government

and the Central Government, be specified in this behalf by the Corporation, may be utilised for financing the expansion programmes of the

Corporation and the remainder, if any, shall be made over to the State Government for the purpose of road development.)

The bracketed portion in Section 30 was substituted far the words ""and the balance shall be made over to the State Government for the purpose

of road development"" by the Road Transport Corporation (Amend ment Act, 1959 (Act No. 28 of 1959).

9. It was not disputed that the object of the activity carried on by the Respondent Corporation was one of general public utility. What was

submitted was that such activity was carried on for profit as shown by Section 22 under which the Respondent Corporation was enjoined to act on

business principles. It was further submitted that the Respondent Corporation could issue shares even to the members of the public and that

dividend would be paid to the shareholders and, therefore, profit would be made from the activity of the Respondent Corporation by its owners,

namely, the shareholders. We are unable to accept these submissions.

10. The submission founded upon Section 22 is based upon a misunderstanding of what that section provides. A Road Transport Corpo ration

cannot be expected or be required to run at a loss. It is not established for the purpose of subsidizing the public in matters of transportation of

passengers and goods. The objects for establishing a Road Transport Corporation are those set out in Section 3 of the RTC Act which we have

already reproduced above. Section 18 shows that it is the duty of a Road Transport Corporation to provide, secure and promote the provision of

an efficient, adequate, economical and properly co-ordinated system of road transport services in the State. No activity can be carried on

efficiently, properly, adequately or economically unless it is carried on on business principles. If an activity is carried on on business principles, it

would usually result in profit, but as pointed out by this Court in the Surat Art Silk Cloth Manufacturers Association Case2 it is not possible so to

carry on a charitable activity that the expenditure balances the income and there is no resultant profit, for to achieve this would not only be difficult

of practical realization but would reflect unsound principles of management. What Section 22, therefore, does when it states that it shall be the

general principle of a Road Transport Corporation that in carrying on its undertakings it shall act on business principles is to emphasize the objects

set out in Section 3 for which a Road Transport Corporation is established and to prescribe the manner in which the general duty of the

Corporation set out in Section 18 is to be performed. It is now firmly established by decisions of this Court in the Swat Art Cloth Manufacturers

Association Case2 and the Bar Council of Maharashtra Case3 that the test is ""What is the pre-dominant object of the activity-whether it is to carry

out a charitable purpose or to earn profit?"" If the pre-dominent object is to carry out a charitable purpose and not to earn profit, the purpose

would not lose its charitable character merely because some profit arises from the activity.

11. There is no factual foundation for the submission based upon Section 23(2) and other sections of the RTC Act which empower a Road

Transport Corporation to issue shares including issuing shares to members of the public and to pay dividend thereon. It is an admitted position, as

pointed out by the High Court in its judgment under Appeal, that no share capital has been raised u/s 23(2) and the entire capital has been

provided by the Government u/s 23(1) and the Government is only paid interest thereon u/s 28(1) just as interest would be paid on any money due

as a debt. That the activity of the Respondent Corporation is not carried on with the object of making profit is made abundantly clear by the

provisions of Section 30 under which prior to the amendment of that section by the Amendment Act of 1959, the balance of income left, after

utilization of the net profits for the purposes set out in Section 30, was to be made over to the State Government for the purpose of road

development and after the Amendment Act of 1959 is to be utilized for financing the expansion programmes of the Respondent Corporation and

the remainder, if any is to be made over to the State Government for the purpose of road development. As pointed out by this Court in Andhra

Pradesh Road Transport Corporation v. income tax Officer, B-I-B- Ward, Hyderabad and Another4 the amount handed over to the State

Government does not become a part of the general revenue of the State but is impressed with an obligation that it should be utilized only for the

purpose for which it is entrusted, namely, road development. It is not, and cannot be, disputed that road development is an object of general public

utility.

12. For the reasons given above, we hold that the Respondent Corpo- ration was entitled to exemption claimed by it both under the 1922 Act and

the 1961 Act.

13. In the result, these Appeals fail and are dismissed with cost.