IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR.JUSTICE MOHAMMED NIAS C.P.

MONDAY, THE 10TH DAY OF JULY 2023/19TH ASHADHA, 1945

W.A.NO.1386 OF 2016

AGAINST THE JUDGMENT DATED 16.6.2016 IN W.P.(C).NO.20448/2016 OF HIGH COURT OF KERALA

APPELLANT/PETITIONER:

M/S. LISIE MEDICAL INSTITUTIONS
REPRESENTED BY ITS DIRECTOR,
FR.THOMAS VAIKATHUPARAMBIL, LISIE HOSPITAL,
KOCHI-682 018.

BY ADV.SRI.ISSAC M.PERUMPILLIL
BY ADV.SRI.JIJO PAUL KALLOOKKARAN

RESPONDENTS/RESPONDENTS:

1 **THE STATE OF KERALA**
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
REVENUE (SPECIAL CELL) DEPARTMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695 001.

2 **THE SUB-COLLECTOR**
OFFICE OF THE SUB-COLLECTOR, FORT KOCHI-682 001.

3 **THE TAHSILDAR**
KANAYANNUR TALUK, ERNAKULAM, KOCHI-682 011.

BY SRI.MOHAMMED RAFIQ, SPL. GOVERNMENT PLEADER

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 20.06.2023, THE COURT ON 10.07.2023 DELIVERED THE FOLLOWING:

J U D G M E N T

A.K. Jayasankaran Nambiar, J.

The appellant, M/s. Lisie Medical Institutions is a trust formed under a Trust Deed dated 03.04.1990 to take over the management of Lisie Hospital, Ernakulam. The present appeal comes before us pursuant to a remand by the Supreme Court through its judgment dated 09.02.2023 in Civil Appeal No.6799 of 2017. The said judgment was rendered by a three Judge Bench to which the judgment of a two Judge bench in **Lisie Medical Institutions v. State of Kerala**[1] was referred after doubting the correctness of an earlier two Judge bench decision of the Supreme Court in **SH Medical Centre Hospital v. State of Kerala**[2]. The brief facts necessary for a disposal of this appeal are as follows:

2. The appellant trust runs a hospital by the name of Lisie Hospital at Ernakulam. In respect of a building that was constructed by it in 2013, wherein it was providing medical treatment at concessional rates, it was

1 (2017) 14 SCC 533
2 (2014) 11 SCC 381

served with a notice demanding building tax under the Kerala Building Tax Act (hereinafter referred to as “the Act” for brevity). As per Section 3(2) of the Act, whenever any question arises as to whether a building qualifies for exemption in terms of Section 3(1) of the Act, the said question has to be referred to the Government which is then obliged to decide the question after giving the interested parties an opportunity to present their case. Section 3(3) of the Act makes it clear that a decision of the Government on the question referred to it under Section 3(2) shall be final and shall not be called in question in any court of law.

3. On a reference made to the government at the instance of the appellant, the Government, by Ext.P9 order dated 17.03.2016, found that the building constructed by the appellant in 2013 would not qualify for the exemption contemplated under Section 3(1) of the Act for “buildings used principally for religious, charitable or educational purposes” when read with Explanation 1 to the said provision which clarified that for the purposes of Section 3(1) of the Act, “charitable purpose includes relief of the poor and free medical relief”. The Government reasoned that the appellant was not providing medical relief free of cost and hence it did not satisfy the definition of charitable purpose under the exemption provision. The Government also examined the income-expense statement of the appellant’s institution and found that the appellant expended only a nominal amount for

charitable purposes and that insofar as the appellant's hospital was providing medical relief by collecting fees, it would not qualify for the exemption.

4. It was aggrieved by the said order of the Government that the appellant approached this Court through W.P(C).No. 20448 of 2016 that was dismissed following the judgment of the Supreme Court in **SH Medical Centre Hospital (supra)**. This writ appeal, which was preferred against the said judgment, was also dismissed by an earlier Division Bench following the same judgment of the Supreme Court. In a further appeal preferred before the Supreme Court, however, the matter was referred by a two Judge Bench that doubted the correctness of the two Judge Bench decision in **SH Medical Centre Hospital (supra)**, and the matter placed before the three Judge Bench that passed the judgment dated 09.02.2023 restoring this appeal to the file of this Court.

5. Before we proceed to discuss the merits of the appellant's claim for exemption of its building as a "building used principally for a charitable purpose", we might notice that the reason for the two Judge Bench in **Lisie Medical Institutions (supra)** doubting the correctness of the view taken by the earlier two Judge Bench in **SH Medical Centre Hospital (supra)** was that the latter Bench had taken the statutory provision under the

Explanation to Section 3(1) of the Act as reading "charitable purpose means relief of the poor and free medical relief" whereas the statutory provision actually read "charitable purpose includes relief of the poor and free medical relief". The referring Bench therefore felt that the interpretation in **SH Medical Centre Hospital (supra)**, that only free medical relief would qualify as charitable purpose, was significantly influenced by its assumption that the statute had defined the phrase "charitable purpose" in the context of medical relief as meaning only "free medical relief". According to the referring Bench, the Explanation simply clarifies that relief to the poor and free medical relief is only one of the facets of charitable purpose, and the use of the word "includes" indicated that there could be other facets of charitable purposes as well.

6. The three Judge Bench that considered the reference found that in order to qualify for the exemption contemplated under Section 3(1) of the Act, the building had to be "principally" used for the charitable purpose, by which term was meant that the dominant substantive use to which the building was put to was for charitable purposes. Dealing next with Explanation 1 to Section 3(1) of the Act, the bench found that "the Explanation goes to indicate that charitable purpose includes and is, therefore, not confined to the relief of the poor and free medical relief" and that **SH Medical Centre Hospital (supra)**, having not noticed the use of

the phraseology “includes” in the Explanation, had to be overruled to the said extent.

7. At the time of hearing of this appeal, the learned counsel for the appellant tried to impress upon us that insofar as the three Judge Bench of the Supreme Court had answered the reference made to it by the two judge bench in **Lisie Medical Institutions (supra)** by holding that it was not only free medical relief but other kinds of charitable activities that would also qualify as charitable purposes under the Act, the appellant’s building would qualify for exemption since the principal use of it was for providing medical relief at concessional rates. The learned Government Pleader Sri. Rafiq Mohammed, on the other hand, insists that it is only a user of the building for providing free medical relief that would qualify for the exemption.

8. On a preliminary reading of the statutory provision, against the backdrop of the interpretation given thereto by the three Judge Bench of the Supreme Court, the meaning to be given to charitable purpose in Explanation 1 appears to be fairly straightforward. However, on a closer reading of the provision, we find that an aspect of interpretation, that has a bearing on the scope and ambit of the medical relief that would qualify for the exemption, has not been examined in any of the judgments referred

above. To be specific, even if the phrase charitable purpose in Explanation 1 is to be given a wide meaning on account of the inclusive definition used therein, when it comes to medical relief qualifying as a charitable purpose, can there be a lesser form of medical relief than "free" medical relief, that can be roped in through the inclusive phraseology used in the exemption provision ? For the reasons given below, we do not think so.

9. At the outset, we might notice that the decision of a two Judge Bench of the Supreme Court in 2021, in **Mother Superior Adoration Convent**[3] was not brought to the notice of the three-judge bench that remitted the matter to this Court. By the said judgment, an earlier Full Bench decision of this Court in **Unity Hospital**[4] that considered the scope of the exemption under Section 3 of the Act, was affirmed. The Full Bench of this Court while interpreting the exemption provision under Section 3 of the Act found, *inter alia*, as follows at paragraph 8 of its judgment;

> "[T]he concept of free service is provided only in the Explanation to the Section, which defines charitable purpose which includes relief of the poor and free medical relief….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 buildings."

3 Govt. of Kerala & Anr. v. Mother Superior Adoration Convent – (2021) 5 SCC 602

4 Unity Hospital (P) Ltd v. State of Kerala – (2010 SCC Online Ker 4679)

10. Thus, in the specific context of provision of medical relief, a Full Bench of this Court had, in 2010, already taken the view that it is only free medical relief that will qualify as a charitable purpose for the purposes of the exemption under the statutory provision. The said view was maintained by the Supreme Court in **SH Medical Centre Hospital (supra)** decided in 2014 and the said view held the field till its correctness was doubted in 2017, in **Lisie Medical Institutions (supra)** and the matter was referred to the three-judge bench, which remitted the matter to this Court in 2023. Thus the decision in **Unity Hospital (supra)** held the field for thirteen years from 2010 to 2023. As noticed by the Supreme Court at para 28 of its judgment in **Mother Superior Adoration Convent (supra)**, where a High Court construes a local statute, ordinarily deference must be given to the High Court judgments in interpreting such a statute particularly when they have stood the test of time. This is more so in the case of tax statutes where persons arrange their affairs on the basis of the legal position, as it exists.

11. It is trite, as noticed by the Supreme Court in **Wood Papers Ltd**[5] that an exemption provision is like an exception and on the normal principle of construction or interpretation of statutes it is construed strictly either because of legislative intention or on economic justification of inequitable burden or progressive approach of fiscal provisions intended to augment

5 Union of India v. Wood Papers Ltd – (1990) 4 SCC 256; See Also: Bombay Chemical Pvt Ltd v CCE, Bombay – (1995) Supp 2 SCC 646

state revenue. But once exception or exemption becomes applicable no rule or principle requires it to be construed strictly. Truly speaking, liberal and strict construction of an exemption provision are to be invoked at different stages of interpreting it. When the question is whether a subject falls in the notification or in the exemption clause then it being in the nature of an exception is to be construed strictly and against the subject but once ambiguity or doubt about the applicability is lifted and the subject falls within the exemption provision, then full play should be given to it and it calls for a wider and liberal construction.

12. When the legislative provision in the instant case indicates that it is the highest extent of relief viz. “free medical relief” that is specified in the inclusive definition for the grant of a benefit of exemption from tax, we feel that a dilution of the prescription as regards the extent of medical relief required for claiming exemption under the statute would tantamount to widening the scope and ambit of the exemption contemplated under the statutory provision at the entry stage, where it is a strict interpretation that is to be adopted. That apart, as was noticed by a three Judge Bench of the Supreme Court in **SGR Tiles Manufacturers**[6], though ‘include’ is generally used in interpretation clauses as a word of enlargement, in some cases the context might suggest a different intention.

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6 SGR Tiles Manufacturers Association & Anr. v. The State of Gujarat & Anr – AIR 1977 SC 90

13. In that case the issue considered by the court was whether Part I of the Schedule to the Minimum Wages Act, 1948 covered Mangalore Pattern Roofing Tiles as well. Entry 22 of the Schedule made the provisions of the Act applicable to “Employment in Potteries Industry”. By an Explanation, it was clarified that for the purposes of the Entry “Potteries Industry” includes the manufacture of the following articles of pottery, namely (a) Crockery (b) Sanitary appliances and fittings (c) Refractories (d) Jars (e) Electrical accessories (f) Hospital ware (g) Textile accessories (h) Toys and (i) Glazed tiles. On behalf of the State Government, it was contended that since the explanation used the term ‘includes’, potteries industry included not only the nine named objects but other articles of pottery as well. The said contention was rejected by the court which found that while there were occasions when the word ‘includes’ had an extending force that added to the word or phrase a meaning which did not naturally belong to it, it was not always so and in the case before it, it hardly made sense to say that potteries industry included the manufacture of articles of pottery if the intention was to enlarge the meaning of potteries industry in any way. The court found that there was no inflexible rule that the word ‘include’ should be read always as a word of extension without reference to the context. In the case before it, the court found that on account of the specification of nine articles after using the word ‘includes’, the latter word

had to be seen as used in the sense of 'means'. The word 'include' in the context of the statute was seen not as a word of extension but as a word of limitation and it had to be given an exhaustive meaning.

14. Applying the said reasoning to the facts of the instant case, we find that it is not in dispute that the building of the appellant was not principally used for providing free medical relief as required under the statutory provision for inclusion under the definition of charitable purpose. It is also not the case of the appellant that it rendered in the said building, any of the other services that qualify as charitable purpose under Section 3 of the Act. We therefore cannot see how the appellant's building would qualify for the exemption under Section 3 of the Act in respect of the medical relief provided in the building in question. We might reiterate that the view taken by us applies only in those cases where the charitable purpose sought to be established is the provision of medical relief, for it is only in relation to the said activity that the legislature stipulates that the relief provided must be "free".

15. Alternatively, and taking note of the contention of the appellant that it is a charitable institution under the Income Tax Act and that its income is applied for charitable purposes recognised under the said enactment, we have considered the extent of free medical relief provided by

the appellant in the building in question with a view to ascertain whether it could get the benefit of a liberal interpretation of the statutory provision that is envisaged in cases where the exemption provision is construed as a beneficial one having as its purpose the encouragement or promotion of certain activities. As observed at paragraph 27 in **Mother Superior Adoration Convent (supra)**, the beneficial purpose of the exemption contained in Section 3(1)(b) of the Act must be given full effect to and a literal formalistic interpretation of the statutory provision is to be eschewed. We have to ask ourselves what is the object sought to be achieved by the provision and construe the statute in accord with such object. On undertaking such an exercise, we find that even if we were to treat the exemption under Section 3(1)(b) as available to a hospital that provides a substantial amount of free medical relief to the poor or the needy, the figures shown in the order of the government that was impugned in the writ petition, reveal that the hospital had expended only 4.23% and 4.56% of its total income for the years 2013-14 and 2014-15 towards free medical relief. This cannot be seen as substantial in any sense of the term and hence even a liberal and expansive interpretation of the term “charitable purpose” cannot come to the aid of the appellant in the instant case.

16. In the result, we find that on the material available before us, the appellant cannot claim exemption from building tax under the Act, based on

the extent of medical relief that it has been providing in the building in question. The Writ Appeal therefore fails, and is accordingly dismissed.

Before parting with this case, we might once again re-iterate that it is solely on account of the fact that the appellant's claim for exemption was premised on the contention that it had used the building in question principally for providing medical relief that would qualify as a charitable purpose under Section 3 of the Act, that we have once again taken the view that the appellant is not entitled to the exemption therein. We are mindful that the Supreme Court had remitted this case for our consideration after setting aside the earlier judgment of a Division Bench of this Court that had arrived at the same finding of ineligibility of the appellant for the benefit of the exemption. Our finding, however, is based on an entirely different line of reasoning and hence not inconsistent with the decision of the three Judge Bench that remitted the matter to this Court.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

Sd/-
MOHAMMED NIAS C.P.
JUDGE

prp/