

Karnataka High Court Commissioner Of Income Tax vs Bel Employees Death Relief Fund ... on 18 September, 1996 Equivalent citations: ILR 1996 KAR 2979, 1997 225 ITR 270 KAR, 1997 225 ITR 270 Karn Bench: R Sethi, S R Babu ORDER The Court 1. In exercise of the powers vesting in it under sub-s. (1) of s. 256 of the IT Act (hereinafter called 'the Act'), the Tribunal, Bangalore Branch has referred the following question of law to this Court for our opinion : "Whether, on the facts and in the circumstances of the case, the Tribunal is right in law in holding that the objects of the assessee society fall within the purview of s. 2(15) of the IT Act and as such its income is exempt under ss. 11 and 12 of the IT Act ?" 2. In order to appreciate the rival contentions of the parties it is necessary to refer to the facts of the case regarding which there is no dispute. The respondent-assessee filed a return income for the asst. yr. 1990-91 declaring the loss of Rs. 10,99,846. While completing the assessment the assessing authority observed that the assessee-association was merely in arrangement for the benefit of the Society's own members. The members and the beneficiaries were found to be one and the same and that the members could claim the benefits of the Society, as a right and also that there was no perceivable benefit to the outsiders. They were found to be not entitled to the benefit of s. 11 of the Act as it was found that their income was not an income from property held for charitable or religious purposes. The AO brought to tax the bank interest of Rs. 3,64,060 derived by the assessee and held that, as in the past, the provisions of s. 13(1)(c) were attracted, the respondent-assessee was not entitled to exemptions under s. 11 and 12 of the Act. In an appeal filed by the assessee, the order passed by the AO was confirmed and held that assessee-association was not a charitable trust. The appellate authority concluded that the bank interest income had accrued not on account of any lending by the association to its members but on account of the fixed deposits kept with the bank which was not covered by mutuality principle and was, therefore, liable to be taxed under the Act. In appeal the Tribunal set aside the order of assessing and appellate authority and decided the case in favour of the assessee. Upon application filed by the Revenue, the Tribunal however come to the conclusion that the question of law raised by the Revenue required an authoritative pronouncement by this Court in the reference made as noted hereinabove. 3. We have heard the learned counsel for the parties at length. 4. Sec. 11 of the Act provides exemption to the income from the property held for the charitable or religious purposes. Under s. 2(15) charitable purpose has been defined to include relief to the poor, education, medical relief, and the advancement of any other object of general public utility not involving carrying on of any activity for profit. The benefit of s. 11 is available to a charitable institution upon fulfilment of other conditions specified under ss. 12, 12A and 13 of the Act. In order to attract the applicability of the provisions of s. 11, the assessee is obliged to prove : (1) that the property is held under trust or other legal obligations; and (2) it is so held wholly or in part for religious or charitable purposes. 5. The definition of the term charitable purpose under s. 2(15) of the Act is inclusive and not exhaustive or exclusive. A perusal of the various provisions of the Act would show that the legislature had intended to give a restricted meaning to

the expression “charitable purpose” with the object to see that no commercial activities treated as charitable object and that any activity for profit or for personal enjoyment or for avoiding tax is not regarded as a charitable purpose.

6. Charity as commonly understood means the bequeath of property in favour of others basically for a religious purpose. In its restricted and commonsense it means, relief to the poor. In English Law ‘charity’ is understood to mean a general public use and comprehends, “relief of aged, impotent and the poor people”. According to Jowitt’s Dictionary of English Law ‘Charity’ means, a general public use and comprehends “relief of aged, impotent and poor people, maintenance of sick and maimed soldiers and mariners, schools of learning, free schools, and scholars of universities; repairs of bridges, ports, havens, causeways, churches, sea-banks and highways; education and preferment of orphans; the relief, stock or maintenance of houses of correction; marriage of poor maids; supportation, aid and help of young tradesmen, handicraftsmen and persons decayed; relief or redemption of prisoners or captives; and aid or case of any poor inhabitants, concerning payments of fifteenths, setting out of soldiers and other taxes.”

7. It has been held by the English Courts that a trust is not charitable unless it is attracted to the public benefit. It should benefit the community or section of the community. Trust would not be charitable if it only conferred private benefits.

8. To support and oppose the reference the learned counsel for the parties have referred to a number of judgments of the English Courts and the Indian High Courts such as the judgment of the House of Lords in *IRC vs. City of Glasgow Police Athletic Association* (1952) SLT 136, *Openheim vs. Tobacco Securities Trust Co. Ltd. & Ors* (1951) AC 297 (HL), *Hobourn Aero Components Ltd.’s Air Raid Distress Fund*, *Ryan vs. Forrest*, 2946 1 Ch. 86, Addl. *CIT vs. Ahmedabad Millowners’ Association*, *Sakthi Charities vs. CIT*, *Shashikant Laxman Kale & Anr. vs. Union of India & Anr.* AIR 1990 SC 2114, *CIT vs. Andhra Chamber of Commerce*.

9. After going through the relevant provisions of law and aforesaid judgements we have come to the conclusion that the ratio in (supra) and *CIT vs. A. P. Police Welfare Society* is very close to the point of law sought to be determined by us in this reference. It may not be out of place to mention that all other judgements relied by the learned counsel for the parties on the point in issue have been considered in both the aforesaid cases.

10. In *Ahmedabad Millowners’s Association’s* case (supra), a Division Bench of Gujarat High Court considered the scope of charitable purpose in relation to the claim of association of millowners in the light of their objects which inter alia provided : (a) The protection of interests of millowners and users of motive power of any description in this part of the country and of those connected with them; (b) The promotion of good relations between the persons and bodies using such power; (c) The doing of all those acts and things by which these objects may be attained; (d) The promotion and protection of the trade, commerce and manufactures of India in general and of the cotton trade in particular; (e) To establish or aid in the creation of funds to benefit employees of the association or the dependants of such persons and to subscribe, donate or guarantee for charitable or benevolent purposes at the discretion of the association; (f) The promotion of good relations between the

employers and the employees. The Court also referred to rr. 15, 22 and 22(a) of the association and in the context of the rules of the association considered the question as to whether the association therein fell within the meaning of the expression ‘charitable purpose’ to attract the provisions of s. 2(15) of the Act. On facts, the Court found that cls. (a)(b) and (c) of objects of the association were intended to protect the interests of “persons” and not the “activities” which they carried. While referring to object (d) of the association, the Court held that the same was not the dominant object of the association. The Court further held : “We now proceed to consider whether an object which serves personal interest would fall within the scope of s. 2(15) of the Act. There is no dispute that the charitable purposes of relief to poor and educational and medical relief have no relevance to the facts of the present case. It is, therefore, the fourth category of charitable purpose, namely, the object of general public utility, with which we are concerned in this case. The expression “object of general public utility” appearing in s. 2(15) would include only those objects which promote the welfare of general public and not the personal and individual interests of some persons. It is not uncommon to find the objects of general public utility being in conflict with the objects of personal welfare of some specified individuals. It is true as held the Supreme Court in the case of Andhra Chamber of Commerce that personal welfare of specified individuals would be incidental or consequential to the main purpose of general public utility, but a converse of this proposition is not always true. Now, if we examine the objects contained in cls. (a), (b) and (c) from this point of view, it will be at once noticed that these objects seek to protect the interests of “millowners and users of motive power” and also of those concerned with them. Clause (b) contemplates the promotion of good relations between the persons and bodies using such powers and cl. (c), which is consequential to cls. (a) and (b), contemplates doing of those acts and things by which the objects covered by cls. (a) and (b) may be attained. Thus, all these three clauses aim at protecting personal interests and not public interests. If this is so, the respondent-association is bound to carry on its activity keeping in mind the narrower concept of promoting the personal and self-serving interests of individuals who are considered “millowners and users of motive power” even when their interests are in conflict with the interests of their own trade or industry. If and when this happens, how can it be said that the respondent-association has carried out an object of general public utility ? General public is undoubtedly interested in trade, commerce or industry conducted by individuals, but it is surely not interested in protecting the personal interests of these individuals if they are in conflict with the interests of trade, commerce or industry. Therefore, when an object seeks to promote or protect the interests of a particular trade or industry, that object becomes an object of public utility, but not so, if it seeks to promote the interests of those who conduct the said trade or industry. This distinction between the protection of the interests of individuals and the protection of interests of an activity, which is of general public utility, goes to the root of the whole problem, and, hence, the Supreme Court has pointedly referred to this problem in CIT vs. Andhra Chamber of Commerce (Supra) at page 727 of the report by

observing as under : ‘It may be remembered that promotion and protection of trade, commerce and industry cannot be equated with promotion and protection of activities and interests merely of persons engaged in trade, commerce and industry.’ In this case, the Supreme Court has pointed out that even an object beneficial to a section of the public is an object of public utility and that to serve a charitable purpose, it is not necessary that the object should be to benefit the whole mankind or persons living in a particular country or province. But, while making these observations, the Supreme Court has been careful in pointing-out the distinction between “a section of the public” and specified individuals. Even so far as “a section of the public” is concerned, the Supreme Court has been particular in identifying it in the following terms : ‘The section of the community sought to be benefited must undoubtedly be sufficiently defined and identifiable by some common quality of a public or impersonal nature; where there was no common quality uniting the potential beneficiaries into a class, it might not be regarded as valid.’ These observations are repeated by the Supreme Court in the subsequent decision in Ahmedabad Rana Caste Association vs. CIT . These observations supply a complete answer to the contention of the learned Advocate-General that the category of persons covered by the expression “millowners and users of motive power” constitutes a section of the public, which can legitimately form the object of a charitable purpose. The observations make it clear that the section of the public which is to be benefited to make the purpose a charitable one should have a common quality of either a “public” nature or an “impersonal” nature. Can it be said that “millowners and users of motive power” have a common quality of a “public nature”? If they have any common quality the same is obviously of a “private” nature, as each one of them is concerned with his own interest and shares nothing in common with the public. It was contended that their common quality is the fact that each one of them is either a millowner or a user of motive power. Granting that this is their common quality, it cannot be said that the said common quality possesses the attributes of a public or impersonal nature. If individuals, whose only common quality is their profession or vocation, can legitimately be invested with the attributes of a public nature, then every partnership, company or an AOP can be an object of charity, and the trusts created for the benefit of such partnerships, companies and associations would be charitable trusts earning exemption under s. 11. Absurdity of such a situation cannot be over-emphasised. What is the exact nature of “section of the public” which can legitimately become an object of a charity, is considered by Lord Greene M. R. in *Powell vs. Compton* (1945) 1 Ch 123, 129 (CA). In that case a bequest was made for the education of a small number of individual relatives of a testatrix. The question which arose was whether these individuals formed a “section of the public” so as to make the trust a charitable trust. Lord Greene M. R. held that the trust was not a valid trust, making the following observations : ‘No definition of what is meant by a section of the public has, so far as I am aware, been laid down, and I certainly do not propose to be the first to make the attempt to define it. In the case of many charitable gifts it is possible to identify the individuals who are to benefit, or who at any given moment constitute the class from which the beneficiaries

are to be selected. This circumstance does not, however, deprive the gift of its public character. Thus, if there is a gift to relieve the poor inhabitants of a parish the class to benefit is readily ascertainable. But they do not enjoy the benefit, when they receive it, by virtue of their character as individuals but by virtue of their membership of the specified class. In such a case the common quality which unites the potential beneficiaries into a class is essentially an impersonal one. It is definable by reference to what each has in common with the others, and that is something into which their status as individuals does not enter.' Our Supreme Court has approved of this principle in *Ahmedabad Rana Caste Association vs. CIT* (supra) and has held that members of Rana caste had a relationship which was an impersonal one dependent upon their status as members of that caste. No such relationship of impersonal nature can be found amongst the millowners and users of motive power, and, hence, none of the objects mentioned in cls. (a), (b) and (c) can be treated as objects of public utility." 11. After referring to the judgements in *Oppenheim vs. Tobacco Securities Trust Co. Ltd.* (supra), to which reference is made by the Supreme Court in *Ahmedabad Rana Caste Association's case* (supra) at p. 710 of the report, it was concluded by the Court that : "If we closely scrutinise the objects contained in r. 3, we find that a substantial part of these objects benefit the association's own members, those connected with them, and their employees. It is no doubt true that the beneficiaries of these objects are also those who are non-members but who happen to be millowners or users of motive power. But that aspect of the matter does not detract from the fact that all the members, and their employees and "those who are connected" with members, form the substantial part of the recipients of the benefits contemplated by the objects. In *IRC vs. City of Glasgow Police Athletic Association* (1953) 34 Tax Cases 76 (HL) Lord Cohen has summarised the legal position in such cases as under at page 105 of the report : '(1) If the main purpose of the body of persons is charitable and the only elements in its constitution and operations which are non-charitable are merely incidental to that main purpose, that body of persons is a charity notwithstanding the presence of those elements - *Royal College of Surgeons of England vs. National Provincial Bank* (1952) AC 631 (HL). (2) If, however, a non-charitable object is itself one of the purposes of the body of persons and is not merely incidental to the charitable purposes, the body of persons is not a body of persons formed for charitable purposes only, within the meaning of the IT Acts - *Oxford Group vs. IRC* (1949) 2 All ER 537; 31 Tax Cases 221 (CA). (3) If a substantial part of the objects of the body of persons is to benefit its own members, the body of persons is not established for charitable purposes only - *IRC vs. Yorkshire Agricultural Society* (1928) 1 KB 611 (CA).' In our opinion, the present case falls within the second and third categories mentioned by Lord Cohen. Even otherwise it is apparent that different objects contained in r. 3 are mixed objects and it is further clear by reference to rr. 22 and 22(a) that the funds of the association can be spent on any of these objects at the discretion of the managing committee. Hence, the present case is fully covered by the ratio of the Privy Council decision in *Mohammad Ibrahim Riza Malak vs. CIT* AIR 1930 PC 226, where it is held that where the property is vested in the head of a com-

munity under deeds of trust, but the trust property is applicable to purposes, many of which are neither religious nor charitable, and it is not suggested that any part of the property is set aside for any charitable or religious purposes, so that it can be identified as appropriated exclusively for such purposes, then the income of the whole of the property is assessable to income-tax. This principle is approved by the Supreme Court in *East India Industries (Madras) Pvt. Ltd. vs. CIT* Considering all these facts we conclude that the respondent-association is not entitled to the benefit contemplated by s. 11 in view of the mixed purposes for which the respondent association is expected to function." 12. We find ourselves in agreement with this view of the Division Bench of Gujarat High Court. 13. The reliance of the learned counsel for the respondents on *Andhra Pradesh Police Welfare Society's case (supra)* is of no assistance to him in as much as the High Court of Andhra Pradesh did not consider the question of the association being for a charitable purpose in the light of the test laid-down by various Courts upon analysis of s. 2(15) of the Act. The Court was persuaded to hold the Society to have been constituted for a charitable purpose because, "hierarchies of the authorities of IT Department itself observed that they are of charitable nature. Therefore, we unhesitatingly hold that the objects are of charitable character." The Court further distinguished the nature of public employment and concluded : "In the ultimate analysis, it is the public that is the employer; qui facit per alium facit per se and so, to the services rendered by the employees in the public employment, the beneficiaries are the public. Testing, therefore, from that angle, the nexus which exists in case of private employment and which is of personal nature, cannot be said to be so in case of public employment. If that be so, in our judgment, the nexus in the case of public employment is its impersonal nature. In fact, we derive considerable assistance in this conclusion from the fact that the armed personnel, who form part of the Government, have been given the benefit under s. 10(23C) of the Act. If, in cases where a fund has been constituted for the benefit of either such armed personnel or their children or their wives, the Central Government has chosen to give expansive definition to s. 10(23C), we see no reason to adopt a restrictive interpretation of the words "charitable trust" vis-a-vis the personnel in the police department. From the foregoing, therefore, it is quite manifest that the assessee, "A. P. Police Welfare Society" which is charitable in its objects, as is quite apparent from the very objectives laid down under the rules framed thereunder, is a body that would constitute "a section of the public" and so, the fund founded for the benefit of such section should be treated as charitable in its object, attracting thereby the exemption from the exigibility to tax." 14. On the basis of what has been stated hereinabove and upon examination of various provisions of the IT Act we have come to the conclusion to respectfully disagree with the judgement of the Andhra Pradesh High Court in *CIT vs. Andhra Pradesh Police Welfare Society's case (supra)*. 15. Having examined the question of law we propose to deal with the facts of the present case in order to determine as to whether respondent-assessee was entitled to exemption under s. 11 of the Act or not. In the instant case aims and objects of respondent-association provide : (i) To give prompt financial assistance to

the bereaved family. (ii) To render some financial assistance to a member who has been regular in subscribing to the Fund for a continuous period of not less than SEVEN years, in the event of his termination from the services of BEL, either on grounds of superannuation or medical disability. (iii) To render some financial assistance to a member who has been regular in subscribing to the Fund for a continuous period of 7 years, in the event of his termination from the services of BEL on grounds other than superannuation/medical disability." 16. Under r. 4 of the rules of the association, membership is confined only to subscribed members who are ultimately to be the beneficiaries. Rule 15 pertaining to disbursement of service benefits provide : "Disbursement of service benefit (vide r. No. 14C (3) to the eligible persons will be regulated as under :- (a) The amount will be paid to the member himself unless he is incapable of receiving the same due to any legal disability (e.g. insanity). (b) If the member is under any legal disability to receive the payment, the amount shall be paid to his nominee(s). (c) If the nominee is a minor, to the guardian of the minor nominee, on production of guardianship certificate issued by the competent Court. (d) If the member expires after going out of the service of the company but before the settlement of service benefit, the said amount shall be paid to the nominee(s). The nominee(s) shall produce Death Certificate issued by a competent authority for claiming the service benefit. (e) In the event of any dispute arising with regard to payment or otherwise under these Rules, the decision of the Managing Committee shall be final and binding. Any financial assistance to be rendered under these rules is at the discretion of the managing committee." 17. The rules unambiguously indicate that the benefit of the scheme or the alleged charitable purpose can be utilised only by specified persons who are required to be the subscribers or their dependents. Contributories to the fund allegedly collected for their personal benefits could not be held to be forming an association for charitable purpose and thus being entitled to the benefit of exemption under s. 11 of the Act. 18. For the reasons stated hereinabove we answer the question of law referred to us in the negative and against the assessee. No costs.