

**IN THE SUPREME COURT OF PAKISTAN**

(Appellate Jurisdiction)

23/19

**PRESENT:**

MR. JUSTICE SH. AZMAT SAEED

MR. JUSTICE FAISAL ARAB

MR. JUSTICE IJAZ UL AHSAN

AFR

**Civil Appeal No.93 of 2015**

*(Against the judgment dated 15.07.2014  
passed by the High Court of Sindh at Karachi  
in C.P.No.D-1100/2012).*

Liaquat National Hospital.

...Appellant(s)

**versus**

Province of Sindh and others.

...Respondent(s)

For the Appellant(s): Mr. Qadir H. Sayeed, Sr. ASC.

For Respondents#1-3: Mr. Sabtain Mehmood, Asstt. A. G. Sindh.  
Mr. Muhammad Akhtar Azad, Director Taxes-I.  
Mr. Shahabuddin Khatri, Director (HQ) Excise  
& Taxation, Sindh.

Date of hearing: 21.02.2019.

**ORDER**

**IJAZ UL AHSAN, J.-** Leave to appeal was granted in this matter, vide order dated 06.02.2016 against a judgment of the High Court of Sindh at Karachi, dated 15.07.2014, passed in Constitution Petition No.D-1100 of 2012.

2. Briefly stated the facts necessary for decision of this *lis* are that the appellant is a hospital functioning under the name and style of "Liaquat National Hospital/Institute of Postgraduate Medical Studies and Health Sciences". It is registered as an association under the Societies Registration Act, 1860. The appellant claimed to be an establishment for

charitable purposes. Accordingly, it applied for exemption from the levy of property tax in terms of Section 4(f) of the Sindh Urban Immovable Property Tax Act, 1958 ("**the Act**"). It appears that initially, the Property Tax Department issued an exemption certificate in favour of the appellant. However, subsequently, it refused to do so which led to prolonged litigation ending up before this Court in the first round of litigation. At that stage, the matter was remanded to the Department to re-examine the issue, give the appellant an opportunity of being heard and pass a reasoned order. The Department conducted *de novo* hearing, heard the appellant, provided it ample opportunity to present its point of view, examined all necessary documents including its audited accounts which were duly analyzed from the point of view of determining how much had been spent/earmarked by the appellant for the purposes of charity. On the basis of material available on record, the Department came to the conclusion that the appellant was not entitled to exemption within the contemplation of Section 4(f) of the Act read with Rule 24 of the Sindh Urban Immovable Property Tax Rules, 1958 ("**the Rules**").

3. We have been informed that provisions of Section 4(f) of the Act underwent various amendments at various stages. However, there is no controversy between the parties that the version of said provisions as it presently stands and



as it relates to the period under dispute is the same. For ease of reference, it is reproduced as follows:-

*"4. Exemption.- The tax shall not be leviable in respect of the following properties, namely:-*

- (a) \_\_\_\_\_
- (b) \_\_\_\_\_
- (i) \_\_\_\_\_
- (ii) \_\_\_\_\_
- (c) (i) \_\_\_\_\_
- (ii) \_\_\_\_\_
- (iii) \_\_\_\_\_
- (d) \_\_\_\_\_
- (e) \_\_\_\_\_
- (f) building and lands or portions thereof used exclusively for [public worship or public charity including] mosques, churches, synagogues, temples, gurdawaras, dharamshalas, drinking water foundations, public burial or burning grounds or places earmarked for the disposal of the dead:]

*[Provided that the exemption to a charitable institution shall be allowed in the prescribed manner.]".*

In view of the fact that exemption to a charitable institution could be allowed in the prescribed manner, Rules were framed under the rule making powers of the Act. Rule 24 which is relevant for the purposes of this controversy is also reproduced below:-

*"24. Charitable institutions.- (1) The Deputy Director, Excise and Taxation, may, on an application of the manager of any of the following institutions*

- (a) an orphanage;
- (b) a hospital or dispensary;
- (c) an alms-house;
- (d) a drinking water fountain for public use in a public place;
- (e) an infirmary for the treatment of animals;
- (f) a burial place;
- (g) a cremation ground;
- (h) a place for the disposal for the dead otherwise than by burial or cremation; and
- (i) an educational institution approved by Government; certify that the institution is a prescribed public charitable institution for the purposes of proviso (i) to clause (f) of subsection (1) of section 4 of the Act.

*(2) Where an institution has been certified under the last preceding sub-rule regular accounts of*

*income and expenditure shall be maintained and such accounts shall be open to inspection by the District Excise and Taxation Officer or by such other officer as he may appoint in this behalf to satisfy himself that the income of the property sought to be exempted, is being spent exclusively for a purpose for which the exemption was allowed.*

*(3) A certificate under sub-rule (1) shall be in Form P.T. 17 and shall, unless cancelled, continue in force until the next assessment, but shall be renewable by the Deputy Director, Excise and Taxation.*

*(4) If at any time the Deputy Director, Excise and Taxation, on the basis of information received by him or on the report of the District Excise and Taxation Officer is, for reasons to be recorded in writing, satisfied that he had wrongly issued any certificate under sub-rule (3), or that the institution concerned has ceased to be a charitable institution, he may cancel the certificate and inform the assessing authority accordingly.*

*(5) On the cancellation of a certificate the exemption allowed under it shall cease to be operative, and the property exempted in consequence thereof shall be liable to assessment of tax as no certificate had been issued.*

*(6) Every Excise and Taxation Officer holding charge of a district independently shall maintain a register of certificates in Form P.T. 18 and in case any certificate is lost duplicate shall be issued on payment of a fee of one rupee in Court-fee stamp."*

We have been informed that initially an exemption certificate was issued for a year. However, subsequently, it was refused.

4. On refusal of the concerned functionary of the Department to issue exemption certificate in favour of the appellant and after exhausting departmental remedies, the appellant approached the High Court in its constitutional jurisdiction seeking a declaration that the appellant is a public charity for the purposes of Section 4(f) of the Act and accordingly it ought to be exempted from payment of property tax. The order of the concerned authority i.e. Excise and



Taxation Officer was also requested to be set aside. However, the learned High Court, after hearing the parties dismissed the constitutional petition vide impugned judgment dated 15.07.2014. Hence, this appeal by leave of the Court.

5. The learned counsel for the appellant has argued that the learned High Court failed to appreciate that the land and building of the appellant were used exclusively for community services as the same were dedicated for the provision of medical services to the public at large. He further submitted that a private hospital for relief of the sick was charitable even though fee was charged but at reduced and at times at subsidized rates. He also submitted that although the appellant charges fully for its healthcare and diagnostic services from patients who can afford to pay the same, such services are provided on subsidized rates to the poor and needy patients. He vehemently argued that the entire income of the hospital was reinvested in the hospital and no income or profit of the same is distributed amongst its members. He finally argued that while specific exemption in respect of hospitals may have been omitted from the Act, a distinction still needs to be drawn between the hospitals that are run for the purposes of profit and those that are operated on a purely non profit basis. He maintains that an institution working on non profit basis would still qualify for exemption under the Act.

6. The learned counsel for the Respondents has supported the impugned judgment. He has submitted that the appellant does not by any stretch of the language fall within the definition of a charitable institution and is not entitled to exemption within the contemplation of Section 4(f) of the Act read with Rule 24 of the Rules. He has also drawn our attention to the audited accounts of the appellant which have nowhere been disputed as well as the analysis of such accounts undertaken by the Department on the basis of figures mentioned in the audited accounts. These constitute the basis for the conclusion that the appellant is not *stricto sensu* a charitable institution nor is it entitled to the exemption claimed by it.

7. We have heard the learned counsel for the parties at considerable length and have carefully perused the record. There is no denial of the fact that the appellant is not by virtue of its registration under the Societies Registration Act, 1860 *ipso facto* entitled to exemption visualized by Section 4(f) of the Act. However, an exemption from payment of property tax is available to a charitable institution from payment of property tax if on the basis of an application moved in this regard, the competent officer of the Department comes to the conclusion that its assets are used exclusively for charitable purposes. There is no denial of the fact nor has it been argued by the learned counsel that building of the hospital is not used exclusively for charitable purposes. As a matter of fact,



he has argued that although the hospital charges fee for the services provided to the patients who can pay for the same, it provides subsidies and rebates to the needy patients as well as some charitable healthcare services. At best, the hospital is providing services to paying patients (non charitable) non paying/partly paying (possibly charitable). In this view of the matter, we are in no manner of doubt that immovable property of the hospital is not used exclusively for charitable purposes and the argument of the learned counsel for the appellant in this regard is misconceived.

8. The learned counsel for the appellant has vehemently argued that the income / profits of the hospital are reinvested in the hospital and are not distributed amongst its members. Therefore, the appellant clearly falls within the definition of a charitable organization. We are unfortunately unable to subscribe to such view. The fact that the profits of an organization are not distributed amongst the members/shareholders does not by itself establish that it is a charitable organization bringing it within the ambit of Section 4(f) of the Act read with Rules 23 & 24 of the Rules.

9. We have also gone through the audited accounts as well as the analysis of such accounts undertaken by the Department for the years 1982 to 2002, which clearly establish that only paltry amounts have been spent on public charity by way of discounts, rebates and concessions in fee

presumably to the poor and needy patients. It has also been found that the appellant is extensively engaged in commercial activities and spends a very low portion of its funds on public charity while charging high fees for providing healthcare and diagnostic services. Further, it is clear and obvious that the income derived from the hospital is not exclusively spent on public charity nor are the buildings of the appellant exclusively used for charitable purposes.

10. Perusal of Section 4(f) of the Act shows that exemption is available to buildings and lands or portions thereof used, "*exclusively for public charity*". The use of word, "*exclusively*" restricts the scope of exemption available under Section 4(f) of the Act. This clearly means that only such buildings and lands or portions thereof are exempt under Section 4(f) of the Act which are used exclusively for public charity. There is no denial of the fact that the land and building of the appellant is not being used exclusively for public charity but only in a very limited manner as is reflected in the statement of accounts placed on record by the appellant which has carefully been examined by us. It is a settled principle of interpretation of exemption clauses in Tax Statutes that the one who claims exemption must establish that he falls within the four corners of such exemption. At best, only a part of the income generated by the appellant is utilized for charitable purposes by means of giving discounts,



rebates and concessions to needy patients for medical and diagnostic services.

11. Having failed to show that either the building or the funds generated by the appellant from its medical and diagnostic services were used exclusively for charitable purposes and having been unable to establish that its claim of charitable use of its funds was duly reflected in its audited balance sheets, we are satisfied that the departmental functionaries as well as the learned High Court had valid reasons and lawful justification in coming to the conclusion that the appellant was not entitled to the benefit of exemption from payment of property tax as visualized in Section 4(f) of the Act read with Rules 23 & 24 of the Rules. The learned counsel for the appellant has been unable to persuade us to hold otherwise.

12. For reasons recorded above, we do not find any merit in this appeal. It is accordingly dismissed.

