

company could not have stated that the petitioner would not entitle for the same.

(3) The award is set aside and the writ petition is allowed admitting the petitioner's claim for the amount assured in the policy to be paid. The same shall be paid with interest @7.5% from the date of petition till the date of payment.

M. Jain

Before K. Kannan, J.

**D.A.V. CHARITABLE TRUST & MANAGEMENT SOCIETY,
CHITRA GUPTA ROAD, NEW DELHI THROUGH
TARLOCHAN SINGH, TEACHER, D.A.V. MODEL
SENIOR SECONDARY SCHOOL, KHANNA,
DISTRICT LUDHIANA,—Petitioner**

versus

STATE OF PUNJAB AND OTHERS,—Respondents

C.W.P. No.20057 of 2008

11th August, 2011

Constitution of India - Art. 226/227 - Charitable Endowments Act, 1890 - Ss. 4, 5 & 6 - Society's Registration Act, 1860 - Stamp Act, 1899 - Whether petitioner-institution would qualify to come within definition of charitable trust and thereby claim exemption from payment of stamp and registration charges - Trust registered as Society - Held petitioner can claim exemption - Failure to apply U/s 4 of the 1890 Act does not take away entitlement of exemption - State notification provide entitlement to a charitable institute under 1890 Act and to a trust registered or notified under the said act - Petition allowed.

Held, That Section 4 is merely facilitative and it offers a right to a charitable institution to apply the Trust to be registered and to be notified in the Official Gazette. The provisions of Sections 4, 5 and 6 would apply in cases where any person connected with the charitable Trust seeks for

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the State's intervention and seeks its legitimacy secured through notification of the Official Gazette. The vesting contemplated under Section 4 itself is only for a limited purpose of Management of the property with such State control as the Section itself sets out. The fact that the petitioner has not applied under Section 4 of the Act cannot take away the entitlement of the petitioner to claim exemption on the basis that it is a charitable Trust in the manner defined under the Act. The State notification prescribing the entitlement to a Charitable Institution must be understood to every Trust as defined under the 1890 Act and ought not to be understood as entitling only such Trusts, which are registered and notified under Section 4 of the under the 1890 Act. The exemption notifications state no more than the entitlement to a Charitable Institution as defined under 1890 Act and not a Trust as registered or notified under the said Act. The impugned orders are quashed and the petitioner is entitled to obtain registration.

(Para 5)

Parshotam Lal Singla, Advocate, *for the petitioner.*

Anil Kumar Sharma, Additional Advocate General, Punjab, *for the respondents.*

K. KANNAN, J. (ORAL)

(1) The action of the State in calling upon stamp and registration charges for a document secured in favour of the petitioner- Society, which claimed as a charitable endowment, is the subject matter of challenge before this Court. It is not in dispute that under both the provisions of the Stamp Act as well as the Registration Act, the Government of Punjab has passed notifications exempting payment of stamp and registration charges in respect of the properties transferred in favour of a charitable institution, established for charitable purpose within the meaning of the Charitable Endowments Act, 1890. The only point is, whether the petitioner-institution would qualify for the exemption and would come within the definition of "Charitable Institution" as prescribed in the respective notifications. The petitioner refers to the fact that the Trust has been registered as a Society under the Societies Registration Act, 1860 and also holds a certificate of the exemption from the Income Tax Department as charitable institution. The learned counsel refers to me the objects of the Society as brought through the regulations

of the Trust which is registered under the Societies Registration Act. The objects of the Society are reads as under:-

“3. The objects of the Society are:-

- I. To establish in Punjab and elsewhere institutions such as Colleges, schools, boarding, houses, ashrams, etc. with the following purposes:-
 - (a) To encourage, improve and enforce the study of Hindi;
 - (b) To encourage and enforce the study of classical Sanskrit and the Vedas;
 - (c) To encourage the theory and practice of Ayurveda; and
 - (d) To provide instruction in (i) English and other modern languages, (ii) Arts and (iii) Sciences both theoretical and applied, including Medicine, Engineering etc;
- II. To provide means for giving technical, industrial, commercial and vocational education;
- III. To affiliate and manage institutions having objects similar to those mentioned in Articles I and II above; and
- IV. To do all such other things as are incidental and conducive to the attainment of the above objects or any one of them. “

(2) The learned counsel refers to the definition of the “charitable purpose” as defined under the Charitable Endowments Act, 1890, which reads as follows:-

“charitable purpose” includes relief of the poor, education, medical relief and the advancement of any other object of general public utility, but does not include a purpose which relates exclusively to religious teaching or worship.”

According to him, therefore, the petitioner-institution comes squarely within a Trust established for a charitable purpose as required in the Government notification and hence, they exempt both under the Stamp Act as well as Registration Act.

(3) The learned counsel Mr. Sharma arguing for the State would contend that the Society is registered only under the Societies Registration Act and has not been notified in the Official Gazette by the appropriate

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Government which is the State Government under the Charitable Endowments Act in the manner provided under Sections 4, 5 and 6. Section 4 of the Charitable Endowments Act, 1890, reads as follows:-

“4. Orders vesting property in Treasurer.-(1) Where any property is held or is to be applied in trust for a charitable purpose, the appropriate Government, if it thinks fit, may, on application made as hereinafter mentioned, and subject to the other provisions of this section, order, by notification in the Official Gazette, that the property be vested in the Treasurer of Charitable Endowments on such terms as to the application of the property or the income thereof as may be agreed on between the appropriate Government and the person or persons making the application, and the property shall thereupon so vest accordingly.

2. When any property has vested under this section in a Treasurer of Charitable Endowments, he is entitled to all documents of title relating thereto.

(4) An order under this section vesting property in a Treasurer of Charitable Endowments shall not require or be deemed to require him to administer the property, or impose or be deemed to impose upon him the duty of a trustee with respect to the administration thereof.”

(4) Section 5 of the above said Act, 1890, details the schemes for administration of property vested in the Treasurer and Section 6 sets out a mode of applying for vesting orders and schemes.

(5) It must be noticed that Section 4 is merely facilitative and it offers a right to a charitable institution to apply the Trust to be registered and to be notified in the Official Gazette and such notification of the property stand vested in the Treasurer of Charitable Endowments and the application of the property or the notification would be a matter that would be agreed between the appropriate Government and the person making the application. The provisions of Sections 4, 5 and 6 would apply in cases where any person connected with the charitable Trust seeks for the State’s intervention and seeks its legitimacy secured through notification of the Official Gazette. The vesting contemplated under Section 4 itself is only for a limited purpose

of Management of the property with such State control as the Section itself sets out. The fact that the petitioner has not applied under Section 4 of the Act cannot take away the entitlement of the petitioner to claim exemption on the basis that it is a charitable Trust in the manner defined under the Act. The State notification prescribing the entitlement to a Charitable Institution must be understood to every Trust as defined under the 1890 Act and ought not to be understood as entitling only such Trusts, which are registered and notified under Section 4 of the under the 1890 Act. The exemption notifications state no more than the entitlement to a Charitable Institution as defined under 1890 Act and not a Trust as registered or notified under the said Act. The impugned orders are quashed and the petitioner is entitled to obtain registration.

(6) The stamp duty paid by the petitioner during the pendency of the writ petition as per the interim order of the Court, is ordered to be refunded by the State to the petitioner within a period of 4 weeks.

(7) The writ petition is allowed.

A. Aggarwal

Before K. Kannan, J.

**M/S KAPIL CEMENT ALLIED PRODUCTS PVT. LTD.
AND ANOTHER,—Petitioners**

versus

**PUNJAB NATIONAL BANK, MAIN BAZAR, HISAR
AND OTHERS,—Respondents**

C.W.P. No.16657 of 2006

18th August, 2011

Constitution of India - Art. 226/227 - SARFAESI Act, - S. 5 - Sick Industries Companies (Special Provisions) Act, 1985 - SS. 15 & 22 - Whether action under SARFAESI act not maintainable during pendency of proceedings under Section 22 of the Sick Industrial Companies Act in 2002 - Proviso of Sick Industrial Companies Act get excluded in enforcement of security under SARFAESI Act - Petition dismissed.