

UNREPORTABLE
*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ WP (C) No. 5581 of 2008

% Reserved on : July 30, 2009
Pronounced on : August 21, 2009

Jaypee Institute of Information
Technology Society . . . Petitioner

through : Mr. Amol Sinha with
Mr. Praveen Chauhan, Advocates

VERSUS

Director General of Income Tax
(Exemptions), Delhi . . . Respondent

through : Ms. Prem Lata Bansal with
Ms. Anshul Sharma and
Mr. Paras Chaudhary, Advocates

CORAM :-

THE HON'BLE MR. JUSTICE A.K. SIKRI
THE HON'BLE MR. JUSTICE NEERAJ KISHAN KAUL

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

A.K. SIKRI, J.

1. The petitioner is a registered society under the Societies Registration Act, 1860. It is running an institute known as "Jaypee Institute of Information Technology" (hereinafter referred to as the 'Institute'). According to the petitioner, the object with which the petitioner Institute was registered is to impart formal education and the institution exists only for the said educational purpose and there is no element of profit involved, as envisaged under the Income Tax Act, 1961 (hereinafter referred to as the 'Act'). It is also declared as a

'Deemed University' by the University Grants Commission (UGC) vide Notification dated 1.11.2004 issued under Section 3 of the University Grants Commission Act, 1956. It is registered under Section 12A as well as Section 80G of the Act. However, its application for registration under Section 10(23C)(vi) of the Act has been rejected by the respondent vide its order dated 26.3.2008. The main reason given by the respondent is that education is not the only objective of the petitioner Institute inasmuch as the objective clause in the Memorandum of Association (for short, 'MOA) of the petitioner Institute mentions that the institute is also established for *"undertaking extra mural studies, extension programmes and field outreach activities to contribute to the development of society"*.

This order is challenged by way of the present writ petition.

2. The core question which falls for consideration is as to whether aforesaid activities stipulated in the object clause is educational activity or it would be termed as an activity other than for educational purpose. In order to decide this question, it would be necessary to give the factual matrix of the case and also the contentions advanced by counsel for either side.
3. The petitioner Institute was registered on 5.5.2004 under the Societies Registration Act, 1860. It is not in dispute that it is imparting formal education by running the aforesaid Institute, namely, Jaypee Institute of Information and Technology from Plot No. A-10 & A-12, Sector-62, Noida (UP). According to the

petitioner, the institute actually exists for the purpose of education only and there is no element of profit. When it applied to the UGC for declaration as 'Deemed University', request of the institute was accepted by the UGC and Notification dated 1.11.2004 was issued, which reads as under :-

“NOTIFICATION

In exercise of the powers conferred by Section 3 of the University Grants Commission Act, 1956, the Central Government, on the advice of the University Grants Commission, hereby declare the Jaypee Institute of Information Technology (JIIT), Noida (Uttar Pradesh) as Deemed to be University under De-novo category for the purpose of the aforesaid Act with immediate effect subject to review after three years.

The grant of de-novo Deemed to be University status to Jaypee Institute of Information Technology, Noida is subject to the conditions that (i) JIIT, Noida will revise/amend its MOA/Rules as per UGC Model MOA/Rules for deemed Universities; (ii) JIIT, Noida will get its land transferred in the name of JIIT Society; and (iii) It will adhere to the guidelines/instructions issued by UGC and AICTE from time to time as applicable to the Deemed Universities.”

Sd/-
(Ravi Mathur)
Joint Secretary to the Government of India”

4. This status of 'Deemed University' was conferred upon the Institute subject to the condition that the institute revises/amends its MOA/Rules as per the UGC model. UGC has issued guidelines for considering proposals for declaring an institute as a 'Deemed University' under Section 3 of the UGC Act. These guidelines are annexed with the writ petition as Annexure-A. Para 3 of these guidelines provides that to qualify for recognition of status as a University, the institution should have, among its primary objectives, post-graduate instruction and training in such branches of learning as

it may deem fit, and research for the advancement and dissemination of knowledge. Para 4(a)(i), which is relevant for this case, stipulates as under :-

“4(a) For the purpose of recognition as a university as institution should generally be:

- (i) Engaged in teaching programmes and research in chosen fields of specialization which are innovative and of very high academic standards at the Master’s (or equivalent) and/or research levels. It should also have a greater interface with society through extra mural, extension and field action related programmes.”

It, thus, specifically provides that in order to get recognition as a University, an institute should have a greater interface with society through extra mural, extension and field action related programmes. Along with these guidelines, model constitution of MOA/Rules which has to be adopted by all such institutions applying for ‘Deemed University’ status is prescribed. It mentions that every such institution has to be registered as a ‘Society’ under the Societies Registration Act, 1860 or as a Trust with trustees being appointed and vested with legal powers and duties and has to frame the MOA/Trust Deed, Rules and Bye-laws. The draft outline of the MOA is also provided, which specifically points out as to what would be the objectives mentioned in the MOA. It reads as under :-

“3. Objectives

The objectives for which the Institute is established are :

- (i) to provide for instruction and training in such branches of learning as it may deem fit.
- (ii) to provide for research and for the advancement of and dissemination of knowledge.

- (iii) to undertake extra mural studies, extension programmes and field outreach activities to contribute to the development of society.
- (iv) to do all such other acts and things as may be necessary or desirable to further the objects of the Institute.

The objectives should be well-defined and well known to the students, teachers and non-teaching staff of the proposed deemed to be university.”

Para 8 of the model constitution of the MOA mandates that income and property of the institute is to be applied for its objectives only as set forth in the MOA. Para 9 further clarifies that income and property of the institute is not to be paid or transferred by way of profits.

5. It is clear from the aforesaid that before an institute can apply to the UGC for declaration as ‘Deemed University’ under Section 3 of the UGC Act, it has to be registered either as a Society or as a Trust. Further, it has to have MOA on the lines of model constitution provided by the UGC which specifically stipulates the objectives which are to be mentioned in the MOA of the institute. Undertaking extra mural status, extension programmes and field outreach activities to contribute to the development of the society is specifically stipulated as one of the objectives which each such institution is bound to satisfy. This is so mentioned even in the guideline No. 4(a)(i). Therefore, inclusion of this objective is imperative, without which the UGC would not accord the status of ‘Deemed University’ to the applicant Institute.

6. It was because of the aforesaid guidelines that the petitioner Institute was obliged to have its MOA in the said form. However, notwithstanding this, the respondent has rejected the application for grant of exemption under Section 10(23C)(vi) of the Act for the assessment year 2007-08 holding that the Institute does not exist solely for educational purposes as the purpose/objective of “*greater interface with society through extra mural, extension and field action related programmes*” is also stipulated in the MOA. According to the respondent, the aforesaid objective does not relate to formal education. The Institute is having model objectives, of which education is only one of them. Each objective is independent of the other and, therefore, it cannot be said that one of them is the primary objective and the others are ancillary to it. The mental process of the respondent can be gazed in the following discussion contained in the impugned order :-

“9. I have considered the case of the applicant in the light of the above provisions of the Act, and the judgments of the Hon’ble Supreme Court and the High Court of Gujarat. The sub-clause (iii) of clause 3 of the MOA of the applicant society does not relate to formal education as defined by the Hon’ble Supreme Court and High Court of Gujarat in the cases cited above. The Society is having multiple objectives of which education is only one of them. Each object is independent of the other and it cannot be said that one of them is the primary object and the others are ancillary to it. It can also not be said that the main object is education and the others are related to it. Each object exists for a specific purpose for which it has been laid down. Due to the amendments brought about in the Income Tax Act and Income Tax Rules, approval u/s 10(23C)(vi) is no longer limited to periodical approval of three years. The approval is now given from a particular assessment year onwards and it is a one time approval till it is withdrawn. Hence, it has to be ensured at the time of giving approval u/s 10(23C)(vi) that a Society by virtue of its objects exists only for the purpose for which it is claiming approval. By leaving the non-educational object loose ended, the applicant will always be at liberty to apply its income towards these objects. This is

not what is envisaged in Section 10(23C)(vi). The applicant must exist solely for education. The word solely as defined, in 'The Law Lexicon' by P. Ramanatha Aiyer means "alone", "single", "used in contradistinction to joint". Further, solely means "exclusive". This shows that the objects, primary or ancillary must be solely for education and not for any other charitable purpose."

7. After hearing the learned counsel for the parties, we are of the opinion that a very narrow, pedantic and orthodox approach has been adopted by the respondent in turning down the application of the petitioner.
8. No doubt, as per Section 10(23C)(vi) of the Act, the requirement is that a University or educational institution, in order to get exemption under the aforesaid provision, is to exist solely for educational purposes. This provision reads as under :-

"Any university or other educational institution existing solely for educational purposes and not for purposes of profit, other than those mentioned in sub-clause (iiiab) or sub-clause (iiid) and which may be approved by the prescribed authority."

9. In what manner the 'education' is to be imparted is explained by the Supreme Court in the case of *Sole Trustee Loka Shikshana Trust v. Commissioner of Income Tax*, (1975) 101 ITR 234 (SC). The Court refined the expression 'Education' as appearing in Section 2(15) of the Act, which is extracted by the respondent as well in the impugned order. It reads as under :-

"The sense in which the word "education" has been used in Section 2(15) is the systematic instruction, schooling or training given to the young in preparation for the work of life. It also connotes the whole course of scholastic instruction which a person has received. The word "education" has not been used in that wide and extended sense according to which every acquisition of further knowledge constitutes education – What education connotes in that clause is the process of training and

developing the knowledge, skill mind and character of students by normal schooling.”

10. We also take note of the judgment of the Gujarat High Court in the case of *Saurashtra Education Foundation v. Commissioner of Income Tax*, (2005) 273 ITR 139 (GUJ), which has been relied upon by the respondent in the impugned order wherein the Gujarat High Court discussed the term “other educational institutions” as appearing in Section 10(22) of the Act in the following manner :-

“...while a trust holding property for the charitable purpose of education, as defined in Section 2(15) of the Income Tax Act, 1961, may also be an education institution existing solely for the purpose of education, the two institutions cannot be treated as belonging to the same class. An institution may be carrying on educational activities as are being carried on by the assessee herein without imparting formal education and without being affiliated to or accountable to any authority. Such a trust can certainly be considered as qualifying for exemption u/s 11(1)(a) read with section 2(15), it is the activities which are in focus whereas, in section 10(22) both the institution and the activities are in focus. An educational institution u/s 10(22) is, therefore, more than a body carrying on charitable activities in the field of education as contemplated by section 2(15). The expression other educational institutions in the section would mean an institution imparting formal education in an organized and systematic training where the institution would be accountable to some authority and where there would be teachers and taught, the former having some degree of control over the later. Although the expression “other educational institution” may not be confined to school or colleges, the expression does contemplate an institution imparting formal educational or training.”

11. No doubt, the aforesaid parameters are to be kept in mind. In fact, these are satisfied in the present case, inasmuch as, the petitioner is running an educational institute imparting education in a systematic manner. The very fact that it is granted the status of ‘*Deemed University*’ by the UGC, for which notification under Section 3 of the

UGC Act has been issued, would be a clinching factor insofar as institutionalized education conducted by the petitioner is concerned. It is imparting education in an organized and systematic manner and is accountable to UGC even for maintaining the standards of education. It is not in dispute that in the petitioner Institute teachers are employed and students enrolled are taught by these teachers under their control and they remain under their control and supervision.

12. On the contrary, the Supreme Court has given wider meaning to the expression “*any educational institution*” occurring in Section 10(23C)(vi) of the Act. Under this phrase, even those institutions would be covered which may or may not have to do anything with the university. The courts have expressed the opinion, by catena of judgments, that categories provided in the aforesaid provision are so different that the university cannot be the genus and “*other educational institution*” the species thereof. Once a college is established by an institution, that would come within the expression “*other educational institution*”. {See – *Addl. Commissioner of Income Tax v. Aditanar Educational Institution*, 224 ITR 310 (SC); *Addl. CIT v. M/s. Hamdard Dawakhana (Wakf)*, 157 ITR 639 (Del); *CIT v. M/s. Venkatasubbiah Reddiar (K.S.)*, 221 ITR 18 (Mad)}.

In the present case, as mentioned above, the activity would clearly fall within the expression ‘*University*’ itself as the petitioner is a ‘*Deemed University*’ and, thus, has got the status of a university.

13. We have to remind ourselves that the main reason given by the respondent in rejecting the application of the petitioners was that the petitioner Institute is having multiple objectives, of which education is only one of them. In coming to this conclusion, the respondent has been swayed by the so-called other objectives, namely *“greater interface with society through extra mural, extension and field action related programmes”* stipulated in the MOA. What is perceived by the respondent is that these objectives are independent of each other and it cannot be said that the main object is education and others are related to it. It is here where the authority faltered in its approach. It is where the respondent faltered. The first aspect which was totally ignored was that this object is included at the instance of UGC, without which the UGC would not have entertained the application of the petitioner Institute for grant of status of *‘Deemed University’*. Obviously, the UGC would not insist on including an objective which is unrelated to *‘education’*. There is a clear purpose behind it. The aforesaid activity/objective is stated by the UGC as part of education. Even in *Sole Trustee Loka Shikshana Trust* (supra), the Supreme Court clearly observed that *“what education connotes in that clause is the process of training and developing the knowledge, skill, mind and character of students by normal schooling”*. Normal schooling is provided by the petitioner institution. What is emphasized by the UGC by necessitating incorporation of the aforesaid objective is that imparting of education is not limited to seeking knowledge through text books alone. The UGC also wants students to have greater

interface with the society. That is necessary because of the modern concept of education which needs to be imparted at schools and universities level.

14. If pure learning, which is one of the purposes of the universities, is to survive, it will have to be brought into relation with the life of the community as a whole, not only with the refined delights of a few gentlemen of leisure. Real education is one which makes a student socially relevant. For this purpose, his greater interface with the society is required. UGC perceives that this can be achieved through extra mural, extension and field action related programmes. These programmes may include NSS and NCC activities, other social service programmes and projects. It is with this purpose in mind that the aforesaid objective is introduced so that students in the petitioner Institution are able to get '*real*' education. The main purpose, therefore, remains '*Education*' which is imparted in a formal way by the petitioner Institute with status of '*Deemed University*' through the help of teachers. The aforesaid activities would only develop the knowledge, skill or character of the students further by achieving education in true sense.

15. The central task of 'education' is to implant a will and facility of learning; it should produce '*not learned*' but '*learning people*'. Any

Rand highlights the following purpose of education :-

“The only purpose of education is to teach a student how to live his life by developing his mind and equipping him to deal with reality. The training he needs is theoretical, i.e. conceptual. He has to be taught to think, to understand, to integrate, to prove. He has to be taught the essentials of the

knowledge discovered in the past and he has to be equipped to acquire further knowledge by his own effort.”

Webster defines ‘*education*’ as the process of educating or teaching. *Educate* is further defined as “to develop the knowledge, skill or character of...”. Thus, from these definitions, we might assume that the purpose of education is to develop the knowledge, skill or character of students. Unfortunately, this definition offers little unless we further define words such as *develop*, *knowledge* and *character*.

Similar purpose is emphasized by Bill Beattie.

Therefore, formal education through schooling/university even would be incomplete if student is not taught how to think, to understand, to integrate and to prove.

16. The petitioner Institute, admittedly, fulfils the requirement of imparting formal education by a systematic instruction, as noted above. If the same university introduces the courses with the objective of “*greater interface with the society through extra mural, extension and field action related programmes*”, these are not the objectives independent of education but are aid to the education.
17. We are, therefore, of the opinion that the impugned order passed by the respondent is unsustainable in law. The petitioner Institute fulfils all the requirements of Section 10(23C)(vi) of the Act and is, thus, entitled for grant of registration and consequently exemption under the aforesaid provision of the Act. We, accordingly, make the rule absolute and allow this writ petition. Impugned order dated 26.3.2008 passed by the respondent is quashed and *mandamus*/

direction is issued to the respondent to grant exemption to the petitioner for the assessment year 2007-08 onwards as per the provisions of Section 10(23C)(vi) of the Act.

No costs.

(A.K. SIKRI)
JUDGE

(NEERAJ KISHAL KAUL)
JUDGE

August 21, 2009
nsk