

A **COMMISSIONER OF INCOME-TAX, MADRAS**

v.

ANDHRA CHAMBER OF COMMERCE

October 1, 1964

B (K. SUBBA RAO, J. C. SHAH AND S. M. SIKRI JJ.)

Indian Income Tax Act, 1922 (11 of 1922), s. 4(3)(i)—Charitable purpose, meaning of—Company's object to promote trade, commerce and industry, whether charitable—Urging or opposing legislation affecting trade etc.—Object whether political.

C The assessee company—The Andhra Chamber of Commerce—had as its main object the promotion, protection, and development of trade, commerce and industry in India. It owned a building where it had its offices, and those parts of it not in the company's own use were let out to tenants. In income-tax proceedings the company claimed exemption in respect of the rental income under s.4(3)(i) of the Indian Income-tax Act, 1922. The claim was negatived by the assessing and appellate authorities. The High Court, however, held that the company was a charitable institution and its income from property was exempt under s. 4(3)(i). The Revenue appealed to the Supreme Court by special leave.

D It was contended by the appellant that the property was not held by the company for a charitable purpose within the meaning of s. 4(3)(i), that the objects of the company were vague, that the benefit contemplated by the Memorandum of Association was not to the public generally but to the members of the company only, and that the objects of the company were political it being open to it to appropriate the entire income for political purposes.

E HELD : (i) The term charitable purpose as defined in the Act was inclusive and not exclusive. It included objects of general public utility. The object of the assessee company—promotion of trade and commerce in the country—was an object of general public utility, as not only the trading class but the whole country would benefit by it. It is not necessary that the benefit must include all mankind. It is sufficient if the intention be to benefit a section of the public as distinguished from specified individuals. [571 F-H].

Commissioners of Inland Revenue v. Yorkshire Agricultural Society, [1928] 1 K.B. 611 and The Institution of Civil Engineers v. Commissioners of Inland Revenue, 16 T.C. 158, relied on.

Commissioner of Income-tax Bombay Presidency, Sind and Baluchistan v. The Grain Merchants' Association of Bombay, 6 I.T.R. 427, disapproved.

G (ii) There was nothing vague about the company's objects. An object of general public utility such as promotion, protection, aiding and stimulation of trade, commerce need not to be valid, specify the modus or the steps by which the objects may be achieved or secured. [573 A-B].

H *Runchordas Vandrawandas v. Parvati Bai L.R. 26 I.A. 71, Commissioners of Inland Revenue v. National Anti-Vivisection Society, 28 T.C. 311 and Baddeley and others (Trustees of the Newtown Trust) v. Commissioners of Inland Revenue, 35 T.C. 661, distinguished.*

(iii) The argument that it was only for the benefit of the trading classes in Andhra Desa that the funds of the company could be utilised did not stand scrutiny. [574 D-E].

(iv) It cannot be said that a purpose would cease to be charitable even if public welfare is intended to be secured thereby if it includes the taking of steps to urge or oppose legislation affecting commerce, trade or manufacture. If the primary purpose be advancement of objects of general public utility, it would remain charitable even if an incidental entry into the political domain for achieving that purpose e.g. promotion of or opposition to legislation concerning that purpose is contemplated. The object mentioned in the Memorandum of Association was that the assessee may take steps to urge or oppose legislative or other measures affecting trade, commerce, or manufacture. Such an object must be regarded as purely ancillary or subsidiary and not the primary object. [575 G-H; 580 B-C].

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In re the Trustees of the Tribune, 7 I.T.R. 415 and *All India Spinners' Association v. Commissioners of Income-tax, Bombay*, 12 I.T.R. 482, relied on.

Pemsel v. Commissioner for special Purposes of Income Tax, [1891] A.C. 531 and *Bowman v. Secular Society Ltd.*, [1917] A.C. 406, referred to.

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Rex v. The Special Commissioners of Income-tax (ex-parte The Incorporated Association of Preparatory Schools) 10 T.C. 73, *The Commissioners of Inland Revenue v. The Temperance Council of the Christian Churches of England and Wales*, 10 T.C. 748, and *Laxman Balwant Bhopatkar by Dr. Dhananjaya Ramchandra Gadgil v. Charity Commissioner, Bombay*, [1963] 2 S.C.R. 625, distinguished.

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CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 941-946 of 1963.

Appeals from the judgment dated February 22, 1961 of the Madras High Court in Case Referred No. 121 of 1956.

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K. N. Rajagopal Sastri, R. H. Dhebar and R. N. Sachthey, for the appellant (in all the appeals).

A. V. Viswanatha Sastri, K. Rajendra Chaudhuri and K. R. Chaudhuri, for the respondent (in all the appeals).

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The Judgment of the Court was delivered by

Shah J. The Andhra Chamber of Commerce—hereinafter called 'the assessee'—is a Company incorporated under the Indian Companies Act 7 of 1913. The assessee was permitted under s. 26 of the Act to omit the word "limited" from its name by order of the Government of Madras.

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The following are the principal objects of the Memorandum of Association of the assessee :

(a) To promote and protect trade, commerce and industries of India, in the Province of Madras and in particular in the Andhra country.

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(b) To aid, stimulate and promote the development of trade, commerce and industries in India or

A any part thereof with capital principally provided by Indians or under the management of Indians.

(c) To watch over and protect the general commercial interests of India or any part thereof and the interests of the Andhras in particular engaged in trade, commerce or manufacture in India and in particular the Andhra Desa.

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(y) To do all such other things as may be conducive to the preservation and extension of trade, commerce, industries and manufactures or incidental to the attainment of the above objects or any of them.

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Clauses (d) to (x) are incidental to the principal objects.

By cl. 4 of the Memorandum of Association it was provided that the income and property of the assessee shall be applied solely towards the promotion of its objects as set forth therein and no portion thereof shall be paid or transferred, directly or indirectly, by way of dividends, bonuses or otherwise howsoever by way of profit to its members.

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On December 2, 1944 the assessee purchased a building and made substantial alterations, additions and improvements therein. The assessee then moved its offices into that building on May 14, 1947 and let out to tenants the portion not required for its use.

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The income of the assessee is obtained from subscriptions and donations collected from its members and rent received from the building. The following table sets out in columns 3 & 4 the net annual value of the property less the statutory deductions permissible under s. 9 of the Income-tax Act, 1922 and the net

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excess of expenditure over the income of the assessee (other than the rental income) incurred in connection with all its activities for the assessment years relating to which dispute arises in this group of appeals :

	Previous year (calendar year)	Assessment year	Amount Rs.	Net excess Rs.
G	(1)	(2)	(3)	(4)
	1947	1948-49	3,400	7,431
	1948	1949-50	6,154	7,139
	1949	1950-51	6,928	5,266
	1950	1951-52	5,740	10,173
	1952	1953-54	8,072	13,672
H	1953	1954-55	8,072	17,397

In proceedings for assessment before the Second Additional Income-tax Officer, City Circle I, Madras, it was contended that

the annual value of the building was not assessable in its hands as the assessee was a charitable institution within the meaning of s. 4(3)(i) of the Income-tax Act, 1922. In the alternative, it was contended that the excess of expenditure over income should be set off against such income if the annual value is held assessable. The Income-tax Officer rejected the contentions of the assessee and assessed its income from property on the basis of net annual value in the six assessment years without debiting the expenditure in excess of income (other than rent) against the net annual value.

The assessee appealed to the Appellate Assistant Commissioner against all the orders of assessments. The Appellate Assistant Commissioner held that the assessee not being a charitable institution the income in question was not exempt under s. 4(3)(i). He also rejected the alternative contention, for in his view, there was no specific profit-making activity of the assessee the loss from which could be set off against its other income.

Appeals were then taken to the Income-tax Appellate Tribunal. The Tribunal held that the assessee was not exempt within the meaning of s. 4(3)(i) from liability to pay income-tax, because the activities of the assessee were intended for the benefit primarily of its members and "embraced only collective action on behalf of all its constituent members" which "could not be said to be the result of any trade or business or vocation carried on by it".

At the instance of the assessee the Tribunal referred the following questions to the High Court :

"(1) Whether the aforesaid income from property owned by the assessee is exempt under s. 4(3)(i) for the aforesaid six years of assessment ?

(2) If the answer to the above question is in the negative, whether the activities of the assessee amount to a trade or business, the profit or loss from which is assessable under s. 10 ?"

The High Court answered the first question in the affirmative and did not record a formal answer on the second question. Against the order of the High Court, these appeals are preferred by the Commissioner of Income-tax, with certificate granted by the High Court under s. 66A (2) of the Indian Income-tax Act.

We are concerned in this group of appeals with the assessment of income of the assessee in the years 1948-49 to 1954-55

A with the omission of the assessment year 1952-53. Between the years 1948-49 to 1952-53 there has been some change in s. 4(3)(i) which before it was amended by Act 25 of 1953 with effect from April 1, 1952 read as follows :

B “Any income, profits or gains falling within the following classes shall not be included in the total income of the person receiving them :

(i) Any income derived from property held under trust or other legal obligation wholly for religious or charitable purposes, and in the case of property so held in part only for such purposes, the income applied, or finally set apart for application thereto.”

C By the last paragraph of sub s. (3) “charitable purpose” was defined as including relief of the poor, education, medical relief, and the advancement of any other object of general public utility, but nothing contained in cl. (i) or cl. (i-a) or cl. (ii) shall operate to exempt from the provisions of the Act that part of the income of a private religious trust which does not enure for the benefit of the public. By the amendment made by s. 3 of the Indian Income-tax (Amendment) Act 25 of 1953, cls. (i) and (i-a) as they originally stood were amalgamated. It is common ground that by the amendment, no alteration which has a material bearing on the question to be decided in these appeals has been made.

D Income from property qualifies for exemption under s. 4(3)(i) if two conditions co-exist (i) the property is held under trust or other legal obligation; and (ii) it is so held wholly or in part for religious or charitable purposes. The building which the assessee owns is by virtue of cl. 4 of the Memorandum of Association held under a legal obligation to apply its income to purposes specified in the Memorandum of Association. It is not the case of the assessee that the objects of incorporation are relief of the poor, education or medical relief, and the only question canvassed at the Bar is whether the purposes for which the assessee stands incorporated are objects of general public utility, within the meaning of the expression “charitable purpose” in s. 4(3).

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H The principal objects of the assessee are to promote and protect trade, commerce and industries and to aid, stimulate and promote the development of trade, commerce and industries in India or any part thereof. By the achievement of these objects, it is not intended to serve merely the interests of the members of

the assessee. Advancement or promotion of trade, commerce and industry leading to economic prosperity enures for the benefit of the entire community. That prosperity would be shared also by those who engage in trade, commerce and industry but on that account the purpose is not rendered anytheless an object of general public utility. 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 *Commissioners of Inland Revenue v. Yorkshire Agricultural Society*⁽¹⁾ an association called the Yorkshire Agricultural Society was formed with the object of holding annual meetings for the exhibition of farming stock, implements etc., and for the general promotion of agriculture. All prizes were open to competition in the United Kingdom, but certain privileges were attached to membership of the Society. The income of the Society was derived from entry fees and gate receipts, local subscriptions for prizes, interest on investments, and subscriptions of members. It was held by the Court of Appeal that on the facts found by the Commissioners the Society was established for a charitable purpose and that purpose continued notwithstanding the incidental benefits enjoyed by members of the Society; and that those benefits did not prevent the Society from being established for a "charitable purpose only".

In *Halsbury's Laws of England*, 3rd Edn., Vol. 4 at p. 236, Art. 517, it is stated :

"An association or institution may benefit its members in the course of carrying out its main charitable purpose and this alone will not prevent it from being a charity. It is a question of fact whether there is so much personal benefit, intellectual or professional, to the members of a society or body of persons as to be incapable of being disregarded."

In *The Institution of Civil Engineers v. The Commissioners of Inland Revenue*⁽²⁾ it was held that the Institution of Civil Engineers founded and incorporated by Royal Charter for the general advancement of mechanical science, and more particularly for promoting the acquisition of that species of knowledge which constitutes the profession of a civil engineer was a body of persons established for charitable purposes only. The Special Commissioners having regard in particular to the provisions of the supplemental charter of 1922, by which the corporate members

(1) [1928] 1 K.B. 611.

(2) 16 T.C. 158.

A of the Institution were authorised to use the title of member, or
 associate member, as the case might be, found that a substantial
 part of the objects of the Institution was to benefit the members
 and rejected the claim of the Institution for exemption. The
 Court of King's Bench disagreeing with the Special Commis-
 sioners held that the benefit of members was purely incidental to
 B the main purpose of the Institution which was established for
 charitable purposes only. The Court of Appeal found that the
 only purpose for which the Institution was established was the
 promotion of science and that purpose had never been added
 to or varied by any of the supplemental charters: it followed
 C therefore that the Institution was established for charitable pur-
 poses only, notwithstanding that it is of advantage to a civil
 engineer in his profession to be a member of the Institution, this
 result not being a purpose for which the Institution was estab-
 lished, but being incidental to and consequent upon the way in
 which the Institution carries out the charitable purpose for which
 D alone it was established.

In the promotion of trade, commerce and industries of India
 the public is vitally interested and if by the activities of the
 assessee that object is achieved, it would be within the meaning
 of s. 4(3)(i) of the Act an advancement of an object of general
 E public utility. In enacting the last paragraph of s. 4(3) the
 legislature has used language of great amplitude. "Charitable
 purpose" includes not only relief of the poor, education and
 medical relief alone, but advancement of other objects of general
 public utility as well. The clause is intended to serve as a
 special definition of the expression "charitable purpose" for the
 F Act: it is again inclusive and not exhaustive or exclusive. Even
 if the object or purpose may not be regarded as charitable in its
 popular signification as not tending to give relief to the poor or
 for advancement of education or medical relief, it would still be
 included in the expression "charitable purpose" if it advances an
 object of general public utility. The expression "object of gene-
 G ral public utility", however is not restricted to objects beneficial
 to the whole mankind. An object beneficial to a section of the
 public is an object of general public utility. To serve a charit-
 able purpose, it is not necessary that the object should be to
 benefit the whole of mankind or even all persons living in a
 particular country or Province. It is sufficient if the intention
 H be to benefit a section of the public as distinguished from speci-
 fied individuals. Observations to the contrary made by
 Beaumont C.J., in *Commissioner of Income-tax Bombay Presi-*

dency, Sind and Baluchistan v. The Grain Merchants' Association of Bombay⁽¹⁾ that "an object of general public utility means an object of public utility which is available to the general public as distinct from any section of the public" and that objects of an association "to benefit works of public utility confined to a section of the public, i.e. those interested in commerce" are not objects of general public utility, do not correctly interpret the expression "objects of general public utility". 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 is no common quality uniting the potential beneficiaries into a class, it may not be regarded as valid.

It is true that in this case there is in fact no trust in respect of the income derived from the building owned by the assessee. But the property and the income therefrom is held under a legal obligation, for by the terms of the permission granted by the Government to the assessee to exclude from its name the use of the word "limited", and by the express terms of cl. 4 of the Memorandum of Association the property and its income are not liable to be utilised only for the purposes set out in the Memorandum of Association.

Counsel for the revenue submitted that the purposes of the assessee are vague and indefinite. He submitted that if a competent Court were called upon, as it may be called upon to administer the obligation imposed by the Memorandum of Association, the Court would on account of vagueness of the objects decline to do so, and therefore the purposes cannot be regarded as charitable. In the alternative, counsel contended that the benefit which is contemplated by the Memorandum of Association was not the benefit to the public generally, but the benefit to its members to carry on their business more profitably. In the further alternative, relying upon cl. 3(g) of the Memorandum of Association, counsel contended that the objects of the assessee were political, it being open to the assessee to appropriate the entire income for political purposes.

But the primary objects of the assessee are to promote and protect trade, commerce and industries and to aid, stimulate and promote the development of trade, commerce and industries and to watch over and protect the general commercial interests of India or any part thereof. These objects are not vague or inde-

(1) 6 I.T.R. 427.

- A finite as objects of general public utility. An object of general public utility, such as promotion, protection, aiding and stimulation of trade, commerce and industries need not, to be valid specify the *modus* or the steps by which the objects may be achieved or secured. It cannot be said that if called upon to administer an institution of which the objects are of the nature
- B set out, the Court would decline to do so merely on the ground that the method by which trade, commerce or industry is to be promoted or protected, aided or stimulated or the general commercial interests of India are to be watched over or protected are not specified. Analogy of cases like *Runchordas Vandrawandas v. Parvati Bhai*⁽¹⁾ in which the Privy Council declared a devise under a will in favour of "dharam" void, is misleading.
- C In that case the devise was declared void, because the expression "dharam" in the view of the Judicial Committee being law, virtue, legal or moral duty was too general and too indefinite for the courts to enforce.
- D Observations by Lord Simonds in *Commissioners of Inland Revenue v. National Anti-Vivisection Society*⁽²⁾ that "One of the tests, and a crucial test, whether a trust is charitable lies in the competence of the Court to control and reform it. . . . that it is the King as *parens patriae* who is the guardian of charity, and that it is the right and duty of his Attorney-General to intervene and to inform "the Court if the trustees of a charitable trust fall short of their duty. So too it is his duty to assist the Court, if need be, in the formulation of a scheme for the execution of a charitable trust. But . . . is it for a moment to be supposed that it is the function of the Attorney-General on behalf of the Crown to intervene and demand that a trust shall
- F be established and administered by the Court, the object of which is to alter the law in a manner highly prejudicial, as he and His Majesty's Government may think, to the welfare of the State?" do not assist the case of the revenue. In the view of Lord Simonds the object of the trust was political and, therefore,
- G void, and not because it was vague or indefinite.

In *Badddeley and others (Trustees of the Newtown Trust) v. Commissioners of Inland Revenue*⁽³⁾ certain properties were conveyed to trustees by two conveyances, in one case on trust, *inter alia*, for the promotion of the religious, social and physical well-being of persons resident in the County Boroughs of West Ham and Leyton by the provision of facilities for religious

(1) L.R. 26 I.A. 71.

(2) 28 T.C. 311, 367.

(3) 35 T.C. 661.

services and instruction and for the social and physical training and recreation of such aforementioned persons who were members or likely to become members of the Methodist Church and of insufficient means otherwise to enjoy the advantages provided and by promoting and encouraging all forms of such activities as were calculated to contribute to the health and well-being of such persons, and in the other case on similar trusts omitting reference to religious services and instruction and otherwise substituting "moral" for "religious". These trusts were, it was held, not for charitable purposes only. The case arose under the Stamp Act of 1891, and it was contended that the trusts being charitable stamp duty at a lower rate was chargeable. The House of Lords held that the trust was not charitable. It was observed by Lord Simonds that "the moral, social, and physical well-being of the community or any part of it is a laudable object of benevolence and philanthropy, but its ambit is far too wide to include purposes which the law regards as charitable".

These cases have, in our judgment, no bearing on the interpretation of the language used in the Memorandum of Association of the assessee.

The argument that it is only for the benefit of the members or the trading classes in Andhra Desa that the funds of the assessee could be utilised does not stand scrutiny. It is clear from the diverse clauses in paragraph 3 of the Memorandum of Association that the objects were not merely to benefit the members of the assessee or even the trading community of Andhra Desa. Reliance was placed upon the membership clause in the Articles of Association and it was submitted that only persons speaking Telugu language and residing in Andhra Desa [as defined in cl. 1(s) of the Articles of Association] could be members. But that argument is wholly unfounded. By sub-cl. (iii) of cl. 5 a Chamber of Commerce or Trade Association protecting and promoting Indian trade, commerce and industry is eligible for election as a member of the Chamber and the representative of such a Chamber of Commerce or Trade Association need not necessarily be able to speak and write Telugu. Similarly by sub-cl. (iv) a Company or Corporation having its principal office or registered office in Andhra Desa or a branch in Andhra Desa is eligible to become a member in its conventional or corporate name and the representative of such a Company or Corporation need not necessarily be able to speak or write Telugu. Again under sub-cl. (v) a Partner of a Firm of a "Private Partnership Concern" or a Joint Family Business

- A concern, or a Sole Proprietary concern having its principal office or registered office in Andhra Desa or a branch in Andhra Desa is eligible for membership of the Chamber and the representative of such a member need not necessarily be able to speak or write Telugu. Finally, by sub-cl. (vi) an individual residing anywhere in India and connected in any manner with trade, industry and commerce is eligible for membership of the Chamber provided his mother tongue is Telugu or he can both speak and write Telugu. There is no geographical limitation upon the membership qualification, nor is there limitation about the capacity to speak or write Telugu. We should not be taken as holding that if there were such restrictions, the character of the assessee as an institution for promotion of charitable objects would thereby be necessarily effected.

Clause 3(g) of the Memorandum of Association on which strong reliance was placed reads as follows :

- "To urge or oppose legislative and other measures affecting trade, commerce or manufactures and to procure change of law and practice affecting trade, commerce and manufactures and in particular those affecting trade, commerce and industries in which Andhras are concerned and obtain by all acknowledged means the removal, as far as possible, of all grievances affecting merchants as a body and mercantile interests in general."

- But cl. 3(g) is not the primary object of the assessee : it is merely incidental to the primary objects of promotion or protection of trade, commerce and industries, or to aid, stimulate and promote the development of trade, commerce and industries or to watch over and protect the general commercial interests.

- The expression "object of general public utility" in s. 4(3) would *prima facie* include all objects which promote the welfare of the general public. It cannot be said that merely a purpose would cease to be charitable even if public welfare is intended to be served thereby if it includes the taking of steps to urge or oppose legislation affecting trade, commerce or manufacture. If the primary purpose be advancement of objects of general public utility, it would remain charitable even if an incidental entry into the political domain for achieving that purpose *e.g.* promotion of or opposition to legislation concerning that purpose, is contemplated. In *In re The Trustees of the Tribune*⁽¹⁾ the

(1) 7 I.T.R. 415.

Judicial Committee of the Privy Council was called upon to consider whether a trust created under a will to maintain a printing press and newspaper in an efficient condition, and to keep up the liberal policy of the newspaper, devoting the surplus income of the press and newspaper after defraying all current expenses in improving the newspaper and placing it on a footing of permanency and further providing that in case the paper ceased to function or for any other reason the surplus of the income could not be applied to the object mentioned above, the same should be applied for the maintenance of a college which had been established out of the funds of another trust created by the same testator, was a charitable purpose within the meaning of s. 4(3). The Judicial Committee expressed the view that the object of the settler was to supply the province with an organ of educated public opinion and this was *prima facie* an object of general public utility, and observed :

"These English decisions—are in point in so far only as they illustrate the manner in which political objects, in the wide sense which includes projects for legislation in the interests of particular causes, affect the question whether the Court can regard a trust as being one of general public utility. In the original letter of reference it was not suggested by the Commissioner that the newspaper was intended by its founder to be a mere vehicle of political propaganda, and in the case of Sardar Dyal Singh it seems unreasonable to doubt that his object was to benefit the people of Upper India by providing them with an English newspaper—the dissemination of news and the ventilation of opinion upon all matters of public interest. While not perhaps impossible it is difficult for a newspaper to avoid having or acquiring a particular political complexion unless indeed it avoids all reference to the activities of Governments or legislatures or treats of them in an eclectic or inconsistent manner. The circumstances of Upper India in the last decade of the nineteenth century would doubtless make any paper published for Indian readers sympathetic to various movements for social and political reform. But their Lordships having before them material which shows the character of the newspaper as it was in fact conducted in the testator's lifetime, have arrived at the conclusion that questions of politics and legislation

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A were discussed only as many other matters were in this paper discussed and that it is not made out that a political purpose was the dominant purpose of the trust.”

B In *All India Spinners' Association v. Commissioner of Income-tax, Bombay*⁽¹⁾ the assessee was formed as an unregistered association by a resolution of the All India Congress Committee for the development of village industry of hand-spinning and hand-weaving. The Association was established as an integral part of the Congress Organisation, but it had independent existence and powers unaffected and uncontrolled by politics. The objects of the Association, amongst others, were to give financial assistance to *khaddar* organisations by way of loans, gifts or bounties, to help or establish schools or institutions where hand-spinning is taught, to help and open *khaddar* stores, to establish a *khaddar* service, to act as agency on behalf of the Congress to receive self-spun yarn as subscription to the Congress and to issue certificates and to do all the things that may be considered necessary for the furtherance of its objects, with power to make regulations for the conduct of affairs of the Association of the Council and to make such amendments in the present constitution, as may be considered from time to time. The funds of the Association consisted mostly of donations and subscriptions, and out of the funds *charkas* and handlooms were purchased and supplied to the inhabitants free of charge. Raw cotton was supplied to the poor people to be spun into yarn and the yarn so spun along with the yarn acquired by the Association were supplied to other poor people for hand-weaving. The income of the Association was treated by the Commissioner of Income-tax as not exempt under s. 4(3)(i) of the Indian Income-tax Act inasmuch as (i) the dominant purpose of the Association was political, (ii) even assuming it was not political, the dominant purpose was not in any event a valid charitable purpose in law, and (iii) some of the objects were not clearly charitable objects. The Judicial Committee held that the income of the Association was derived from property held under trust or other legal obligation wholly for charitable purposes and the English decisions on the law of charities not based upon any definite and precise statutory provisions were not helpful in construing the provisions of s. 4(3)(i) of the Indian Income-tax Act. The words of s. 4(3) were largely influenced by Lord Macnaghten's definition of charity in *Pemsel v. Commissioners for Special Purposes of Income-Tax*⁽²⁾, but that definition had no statutory

(1) 12 I.T.R. 482.

(2) [1891] A.C. 53

authority and was not precisely followed in the most material particulars; the words of the section being "for the advancement of any other object of general public utility" and not as Lord Macnaghten said "other purposes beneficial to the community". The Judicial Committee observed that the primary object of the Association was relief of the poor and apart from that ground there was good ground for holding that the purposes of the Association included advancement of other purposes of general public utility. The Judicial Committee then held :

"These words, their Lordships think, would exclude the object of private gain, such as an undertaking for commercial profit though all the same it would subserve general public utility. But private profit was eliminated in this case. Though the connexion in one sense of the Association with Congress was relied on as not consistent with 'general public utility' because it might be for the advancement primarily of a particular party, it is sufficiently clear in this case that the Association's purposes were independent of and were not affected by the purposes or propaganda of Congress."

The Indian legislature has evolved a definition of the expression "charitable purpose" which departs in its material clause from the definition judicially supplied in *Pemsel's case*⁽¹⁾, and decisions of English Courts, which proceed upon interpretation of language different from the Indian statute have little value. We, therefore, do not propose to deal with the large number of English cases cited at the Bar, except to mention three, which declared trusts for political purposes invalid.

In *Rex v. The Special Commissioners of Income-tax (ex-parte The Headmasters' Conference)* and *Rex v. The Special Commissioners of Income Tax (ex-parte) The Incorporated Association of Preparatory School*⁽²⁾ it was held that a conference of Headmasters incorporated under the Companies Act as an Association limited by guarantee, of which under the Memorandum of Association income was to be applied towards the promotion of its expressed objects, one of which was the promotion of, or opposition to, legislative or administrative educational measures, the holding of examinations, etc. was not a body of persons established for charitable purposes only within the meaning of the Income Tax Acts. Similarly an incorporated Association of Preparatory Schools incorporated under the Companies Act as an Association limited by guarantee, income

(1) [1891] A.C. 531.

(2) 10 T.C. 73

A whereof was to be applied solely towards the promotion of its expressed objects which included the advancement and promotion of, or opposition to, legislative or administrative educational measures etc. was not an association whose income was applicable to charitable purposes only. The Court of King's Bench held in the case of each of the two trusts that because the income
 B could be utilised for promotion of, or opposition to, legislative or administrative educational measures, and those being the primary objects, the income was not liable to be applied solely to charitable purposes.

C In *The Commissioners of Inland Revenue v. The Temperance Council of the Christian Churches of England and Wales*⁽¹⁾ a Council constituted by resolution at a meeting of representatives of the temperance organisation of the Christian Churches of England and Wales, the purpose of which being united action to secure legislative and other temperance reform was held not to be a council established for charitable purposes only, nor was
 D its income applicable to charitable purposes only, and that it was therefore not entitled to the exemption sought.

In *Bowman v. Secular Society Ltd.*⁽²⁾ Lord Parker observed:

E "A trust for the attainment of political objects has always been held invalid, not because it is illegal but because the Court has no means of judging whether
 a proposed change in the law will or will not be for the public benefit."

F This Court in a recent judgment, *Laxman Balwant Bhopatkar by Dr. Dhananjaya Ramchandra Gadgil v. Charity Commissioner, Bombay*⁽³⁾ considered whether for the purposes of the Bombay Public Trust Act 29 of 1950 a trust to educate public opinion and to make people conscious of political rights was a trust for a charitable purpose. The Court held (Subba Rao J., dissenting) that the object for which the trust was founded was political, and political purpose being not a charitable purpose did
 G not come within the meaning of the expression "for the advancement of any other object of general public utility" in s. 9(4) of the Bombay Public Trusts Act, 1950. The definition of "Charitable purpose" in s. 9 of the Bombay Public Trusts Act closely follows the language used in the definition given under the Income-tax Act s. 4(3). But in *Laxman Balwant Bhopatkar's case*⁽³⁾, as in the cases of the Courts in England which we
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(1) 10 T.C. 748.

(2) [1917] A.C. 406, 442.

(3) [1963] 2 S.C.R. 625.

have referred to, it was held that the primary or the principal object was political and therefore the trust was not charitable. In the present case the primary purpose of the assessee was not to urge or oppose legislative and other measures affecting trade, commerce or manufactures. The primary purpose of the assessee is, as we have already observed, to promote and protect trade, commerce and industries to aid, stimulate and promote the development of trade, commerce and industries and to watch over and protect the general commercial interests of India or any part thereof. It is only for the purpose of securing these primary aims that it was one of the objects mentioned in the Memorandum of Association that the assessee may take steps to urge or oppose legislative or other measures affecting trade, commerce or manufactures. Such an object must be regarded as purely ancillary or subsidiary and not the primary object.

The appeals therefore fail and are dismissed with costs. One hearing fee.

Appeals dismissed.