A

STATE OF UTTAR PRADESH

v.

BANSI DHAR AND OTHERS

December 11, 1973.

B [D. G. PALEKAR AND V. R. KRISHNA IYER, JJ.]

Public Trust—Doctrine of cypres, if applicable to non-testamentary gifts—Conditions for its applicability—General object, when inferred—Applicability of s. 83, Trusts Act (2 of 1882) to public trusts.

C

In 1945, a donation of Rs. 30,000 was made for building a 6-bed hospital for women on an approved chosen spot, according to the approved plan, to be constructed by the donor with a matching contribution from the government and with any other voluntary donation. The donor died in 1947 and all that was done by that time was to lay a foundation stone. In 1952, the sons of the donor filed a suit for return of the Rs. 30,000 on the ground that the D conditions subject to which it had been given had been violated and that the contemplated charity never materialised.

The trial court and the High Court in appeal decreed the suit.

Dismissing the appeal to this Court,

HELD : (1) A hospital for women is a charitable object and since the beneficiaries are a section of the public, it constitutes a public trust.

E (2) The doctrine of *cypres* is applicable to both testamentary and non-testamentary gifts for public charitable purposes. [686G]

Nori Venkata Rama Dikshitulu v. *Ravi Venkatappayya*, A.I.R. 1960 A.P. 35 and *Potti Swami* v. *Rao Saheb D. Govindarajulu*, A.I.R. 1960 A.P. 605, referred to.

(3) The conditions for the application of the doctrine are—(a) The settlor has shown a general charitable intention that is, the charitable object is of a general and not of a specific nature, and the original trust has failed *ab initio;* (b) there must be impossibility, not in the strict physical sense but in the liberal, F diluted sense, of impracticability of carrying out the settlor's intention; and (c) there must be a completed gift. [689B-E]

In re Hilsom [1913] 1 Ch. 314, *In re Ulversion and District New Hospital Building Trust*, [1956] 1 Ch. 622, *Commissioner, Lucknow Division* v. *Deputy Commissioner of Pertapgarh*, A.I.R. 1937 P.C. 240 and *In re Rymer*, [1895] 1 Ch. 19, 31, referred to.

G (4) The present is a borderline case is to whether there was a general intention to benefit the community, but Courts should lean in favour of the charity taking effect by imputing, without straining the language, an intention to help the people of the area with a maternity hospital. The rule of law must rise to this rule of life by a facilitating the fulfilment of benevolent objects but vigilantly guarding against perversion, diversion, subversion, inaction and unjust enrichment, where public donations have been raised. [691B]

H (5) But the transaction in the instant case was not a gift simpliciter but was subject to a matching grant from the Government the building being required to be constructed by the donor with such augmented money etc. Assuming substantial compliance as sufficient in law, one of the conditions has been carried out by the State. [693F]

A

Harish Chandra v. *Hindu Sharma Sewak Mandal*, A.I.R. 1936 All. 19 *In re University of London Medical Sciences Institute Fund*, [1909] 2 Ch. 1;8-9, *In re White's Trust*, [1886] Ch. Div 449, *Tudor on Charities* and *Halsbury's Laws of England* 3rd Edn., referred to.

(6) The conditions having failed, the charity proved abortive, and the legal consequence is a resulting trust in favour of the door. Though s. 83 of the Trusts Act, 1882 does not apply *proprio vigore*, it embodies a universal rule or equity and good conscience and may be held to be applicable to public charitable trusts also. [688A-B; 693F-G] B

[Government litigation involves expenditure of public money and should not be permitted to become an occasion for abusing the legal process regardless of the morality of the please and indifferent to any offer of settlement of the claim on fair terms.]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1844 of 1967. C

Appeal by Special Leave from the Judgment and Order dated the 10th August 1965 of the Allahabad High Court at Allahabad in First Appeal No. 435 of 1954.

G. N. Dikshit and *O. P. Rana*, for the appellant.

R. K. Garg and *S. C. Agarwala*, for respondent No. 2. D

The Judgment of the Court was delivered by—

KRISHNA IYER, J.—A litigation launched by the sons of a frustrated philanthropist, who is no more, has reached the last deck of the justice edifice as a civil appeal, by special leave, a little over 22 years after its institution. While illustrating the injustice of delayed justice this case more provocatively exposes the damage done by E the administration's dilatory indifference to a clear commitment of an enthusiastic Collector to construct quickly a 'female' hospital out of a donation from a compassionate gentleman in Kannauj on certain conditions which were breached by Government, according to the findings of the courts below. These socially disturbing features will be better appreciated regardless of the legal result, when the facts F are set out, which we now proceed to do.

An old, affluent man called Dubey, in a munificent mood, responded to the request of Shri Govind Narain, then Collector of Farrukhabad District, way back in 1945. A promise to donate Rs. 30,000/- was made, on the basis of a matching contribution by Government, for the good cause of a women's hospital in sacred G memory of the donor's deceased wife, Gomti Devi. Apprehending the tardy ways of government, this anxious soul insisted on his being put in charge of the construction so that the hospital may come into existence through his diligent hands and in his lifetime, aided of course by government grant and auxiliary voluntary contributions. The activist Collector accepted these conditions, received the philanthropic cheques, moved swiftly to get the foundation-stone laid ceremonially H by the British Indian Governor of the Province, all in 1945. This sentimental stone had the name Gomti Devi inscribed thereon, and the donor, believing the brave words of the Collector about quick

A acquisition of land, government contribution and making over of the agency for construction to himself, started collecting the necessary bricks for the building. But Shri Govind Narain in the usual course left the District charge and once his back was turned on the District, things got stuck. For the next Collector, Shri Bhagwan Sahai, noticing official stagnation in this matter wrote to the Civil Surgeon in March 1946—four months after Sir Maurice Hallet had planted with
B pomp the first stone at the hospital site—that "the proposal has been hanging since long which is certainly not fair to the donor". Shri Sahai tepidly concluded his note thus :

> "For the balance of non-recurring expenditure I presume we shall have to apply to Government. If so who
C will do it? C.S. or I. I am prepared to do so if I have a clear cut scheme with all loose ends tied up."

Nothing happened however, and to add insult to injury the District Supply Officer sent a chill into the chest of the expectant donor by proposing to freeze the bricks collected by him for the hospital building and to divert them for the construction of a school, thus
D showing the lazy unconcern of the officials for the hospital project. Exhibits 18 and 19 betray this neglect of Govind Narain's undertaking on behalf of Government.

The old man, Dubey, continued to correspond with the District authorities on the hospital project till he was spirited away by death in July 1947 and his human agency for construction thus became un-
E available. No doubt, no *post-mortem* repentance was manifested in the official quarters even after Independence came to the country and nothing was done for years, suggesting that slow-motion administration, a die-hard heritage has survived British rule in India.

The subsequent part of the story discloses dereliction of duty, as
F it were, for instead of constructing the proposed six-bed hospital expeditiously with the additional sum to be brought into the hotchpotch by Government, what transpired was that the plans were changed, the agency visualised in the original understanding given up, government's matching sum never granted and even the foundation stone laid by the Governor of the Province removed. Apparently the officials engaged themselves in paper work of no import like the
G routine reply to the reminder by the sons of the donor, Ex. A-6, which chanted "that the proposal of constructing a 6-bedded Women's Hospital at Kannauj is under the active consideration of Government." If six years after the receipt of the donation of Rs. 30,000/- for the urgent execution of a hospital construction, the matter was "under the *active* consideration of Government"—its sense of time had suffered somnolence or its officialese had indolent semantics. Even a formal
H suit notice under s. 80 of the Civil Procedure Code for return of the sum given to the Collector on account of the failure of the charity did not shake the Government out of its neglectful tranquillity. These lethergic official exercises in the present case remind one of the words

of Lord Curzon about the administrative apparatus, which bear repetition and find some contemporary echo. The Viceroy wrote to his Secretary of State : A

> "I am prodding up the animal with most vigorous and unexpected digs, and it gambols plaintively under the novel spur. Nothing has been done hitherto under six months. When I suggest six weeks, the attitude is one of pained surprise; if six days, one of pathetic protest; if six hours, one of stupefied resignation." B

Had August 1947 accelerated the process the Dubeys might have avoided the court.

The present suit, if it has served nothing, has at least awakened the State Government to some extent to its obligation. For, Government at long last constituted a new committee for the construction of the hospital building, drew up a new plan and built a 22-bed hospital in the same place. All this was after the legal action was instituted and perhaps on account of it. It must be mentioned in fairness to the plaintiffs that they offered to withdraw the suit for the return of the money if the original undertaking was substantially complied with and half the costs of the suit—which was not much—upto then incurred were also paid by Government. However, this public body chose to continue what we regard, in the light of fuller facts, its cantankerous defence despite defeat in two courts. Government litigation involves expenditure of public money and cannot become an occasion for abusing the legal process regardless of the morality of the plans and indifferent to any offer of settlement of the claim on fair terms. Here we may quote what one of us had observed in an earlier appeal(1) about litigation to which Government is a party : C D E

> "In the context of expending dimensions of State activity and responsibility, is it unfair to expect finer sense and sensibility in its litigation policy..... the Law Commission of India in a recent report(2) on amendments to the Civil Procedure Code has suggested the deletion of s. 80, finding that wholesome provision hardly ever utilised by Government, and has gone further to provide a special procedure for government litigation to highlight the need for an activist policy of just settlement of claims where the State is a party.... certain observations I had made in a Kerala High Court decision(3).....I may usefully excerpt here : F G

> "The State, under our Constitution, undertakes economic activities in a vast and widening public sector and inevitably

(1) *Dilbagh Rai Jarry* v. *Union of India*. Civil Appeal No. 1898 of 1967; judgment delivered on November 5, 1973. H

(2) Law Commission of India, 54th report— Civil Procedure Code.

(3) *P.P. Abubacker* v. *Union of India*; A.I.R. 1972 Ker. 103; 107; Para

A gets involved in disputes with private individuals. But it must be remembered that the State is no ordinary party trying to win a case against one of its own citizens by hook or by crook; for, the State's interest is to meet honest claims, vindicate a substantial defence and never to score a technical point or overreach a weaker party to avoid a just liability or secure an unfair advantage, simply because legal devices B provide such an opportunity. The State is a virtuous litigant and looks with unconcern on immoral forensic successes so that if on the merits the case is weak, government shows a willingness to settle the dispute regardless of prestige and other lesser motivations which move private parties to fight in court. The lay-out on litigation costs and executive time by the state and its agencies is so staggering these days be- C cause of the large amount of litigation in which it is involved that a positive and wholesome policy of cutting back on the volume of law suits by the twin methods of not being tempted into forensic show-downs where a reasonable adjustment is feasible and ever offering to extinguish a pending proceeding on just terms, giving the legal mantors of government some initiative and authority in this behalf."

D

To complete the human side of the story, we reach its anti-climax when, the forgotten foundation-stone-laying notwithstanding, a fresh ceremony of stone placing for the new hospital was gone through with the then Health Minister, Shri C. B. Gupta, as the diginitary to repeat what the former Governor had once done. This presumably hurt the E donor's sons who prayed to the Collector at least for the return of the former lapidary momento. Be that as it may, we are assured happily that a hospital has been constructed although it was a total departure from the project which induced the alleged conditional gift.

The sons of the donor brought the present suit on the ground that the conditions subject to which the sum of Rs. 30,000/- had been given had been violated that the charity as contemplated had never materialised and a totally different scheme had been belatedly executed. The F defendant, the State of Uttar Pradesh, contested the facts but failed in that effort, Shri Govind Narain having wisely declined to be a witness to the Government's version and the documents having testified to the truth of the plaintiff's case. Some legal contentions were raised but rejected and have been repeated before us by Shri Dixit, learned G counsel for the appellant State.

The facts as found by the trial Judge were accepted by the State before the High Court and affirmed by the learned Judges. Before proceeding to discuss the issues of law we may set out the findings of fact concurrently recorded. The High Court held :

H

"The learned counsel for the appellant has rightly conceded that for the purpose of this appeal all the findings of fact arrived at by the learned Civil Judge might be accepted as correct. We have gone through the entire evidence and we

feel no hesitation in accepting the findings of fact arrived at by the learned Civil Judge. It is fully established from the evidence on the record that the sum of Rs. 30,000/- had been advanced by Pandit Surj Prasad Dubey on the understanding that the hospital would be constructed.

(1) on the approved site;

(2) according to the approved plan; and

(3) at an early date through his agency.

the entire amount of Rs. 60,000/- was to be paid to Sri Dubey for the construction of the hospital."

Since the appellant had accepted the findings of fact recorded by the Civil Judge we may notice those findings before proceeding further. The trial Judge held :

"There is overwhelming and unrebutted oral and documentary evidence which leaves me clear that Pandit Suraj Prasad Dubey, the deceased father of the plaintiffs gave Rs. 30,000/- as his subscription on the terms and conditions alleged in the plaint."

"These letters and the evidence of P.W. 1 Sri Hari Har Nath Vakil conclusively prove that the following terms were settled between the Collector and Dubeyji.

1. That the hospital would be constructed on Kannauj Makrand Nagar Road near Phoolmati Temple.
2. That the hospital will be named after the name of person suggested by Dubeyji and which name was to be communicated by him, to the D.M. subsequently. Dubeyji suggested the name of the hospital as "Gomti Devi" by his letter dated 30th October, 1945 which name was accepted by D.M.
3. That the hospital would be constructed by Dubeyji according to the plan approved by Government with nice arrangement for maternity and child welfare.
4. That a sum of Rs. 30,000 would be paid by Dubeyji for that purpose.
5. That the aforesaid sum along with the plan necessary help for procuring raw materials would soon be given to Dubeyji after the foundation laying ceremony was over so that Dubeyji might be able to get the hospital constructed at the earliest through his own agency."

. . . . . .

"It is thus clear that all the terms set out in the plaint were settled and have been definitely proved by the evidence discussed above. The entire matter was settled with Sri Govind Narain and although several adjournments were taken by the defendant to produce Sri Govind Narain but he was

A not examined. It seems he was not found in a position to say any thing to the contrary or in rebuttal to plaintiffs' evidence. There is thus not a word in rebuttal of plaintiffs' case on the matter of terms settled between the parties."

. . . . . .

"In this connection I think it will not be unimportant to
B point out that District Government Counsel was examined under O. 10 rule (r) C.P.C. he admitted that plaintiffs settled term with defendant Government through Sri Govind Narain the then District Magistrate. He also admitted that the then Collector had agreed that the building be constructed according to the approved plan through the agency of plaintiffs' father. He further admitted that defendant agreed
C to invest at least Rs. 30,000/- for the construction of that hospital. The only fact which he appears to deny is that there was no understanding that the hospital would be completed and established in the near future. All other conditions set out in the plaint were practically admitted by him."

D "I therefore hold that plaintiffs' father donated Rs. 30,000 for a specific object *viz.* for the construction of Gomti Devi Female Hospital with child welfare and maternity ward at Kannauj Makrand Nagar Road near Phoolmati Devi temple under his own agency on the terms contained in para two of the plaint. Issues answered correctly in favour of the plaintiffs."

E "As I have held above plaintiffs' father gave a handsome subscription of Rs. 30,000 on the terms and conditions contained in para 2 of the plaint. There is overwhelming unrebutted evidence which point to the irresistible conclusion that the defendant left the scheme in the cold and venture came to an end in the life time of Pt. Suraj Prasad Dubey."

F These concurrent findings of fact have been rightly rendered in our view, counsel Shri Dixit having taken us through the relevant papers. Of course, he did not canvass the correctness of these findings before us so that we have to proceed on the footing that given these facts, has the appellant made out a case to dislodge the liability to disgorge the sum of Rs. 30,000 decreed by the courts below.

G We need hardly say that the eleemosymary venture agreed upon between the late Dubey and the then Collector in 1945 remained a humanitarian essay, not a charity accomplished, but the legal question still remains whether the plaintiffs stepping into the shoes of the donor have the right to demand re-payment of the amount already made over. It is proper to condense and formulate the legal frame of the longish submissions made by Mr. Dixit. He argued that the
H donation was 'without strings', if we may use a *cliche,* that Dubey had made an outright gift with general charitable intent and the pious wishes superadded to the donation did not make it a conditional gift. In his view, the non-fulfilment of these wishes did not amount to the

failure of a condition precedent making the gift inoperative. His further contention was that the gift having been accompanied by a general charitable purpose of benefiting the local people with hospital facilities the *cypres* doctrine applied to the case even if the object of the charity could not be literally carried out. Therefore, he argued that the Court may issue directions appropriate to the broad purpose so as to salvage the substance of the charity. Finally, he urged that the plaintiffs had, subsequent to the suit, agreed to give up the claim in the light of a new hospital having been built and they could not now resile therefrom or recall the sum their father had irrevocably given away for a public cause. Mr. Garg, learned counsel for the respondent, has sought to meet the challenge of law by law, facts by facts and unfilial imputation of withdrawing from the paternal bounty by proof of a better public charity by starting a school in Gomti Devi's name with a much larger input. We will examine the validity of these various contentions.

A B C

The essential issue turns on the nature and efficacy of the gift itself but before we discuss it the deck may as well be cleared by disposing of the plea of agreement to withdraw the claim, estoppel on account of the defendant having acted thereon, and the consequent untenability of the action. Both the courts have overruled it and we are in agreement with them.

D

After the institution of the suit Shri V. Kumar, the then District Collector, discussed the closure of the litigation with Murli Dhar, one of the plaintiffs. The latter offered not to press for the refund on certain terms. He desired that the hospital be constructed through the agency of the plaintiffs now that Shri Dubey was dead, according to the old approved plan on the approved site. Ex.A-4 evidences this offer. The Collector did not, and perhaps could not without the consent of Government, accept the said offer but merely replied that the matter would be referred to Government. Nothing more was done, apart from internal correspondence. The long wait was in vain. Thereafter, the plaintiffs had to pay the full court-fee although to start with they had filed the suit with a nominal court fee. Ex. 25 indicates that the Government would not agree to the agency of the plaintiffs for the construction of the hospital. It is further seen that in Ex. 27 the plaintiffs again made an offer to withdraw the case provided they were also paid half the costs of the suit till then incurred. Papers moved but the agreement did not click. The trial Court, going through the documentary evidence on this aspect, concluded :

E F G

> "It is, therefore, clear that there was no finally accepted contract between parties. There have been offers and counter offers without any final acceptance by either of them..... It is, therefore, erroneous to say that defendant started construction on the assurance of plaintiffs that they would withdraw the suit as soon as the work started. Consequently it cannot be said that defendant incurred any expenditure on account of plaintiffs' assurance. Thus no question of estoppel arises."

H

A In the High Court the contention was repeated and the learned Judges disposed of the contention with the observation :

> "The plaintiffs agreed to withdraw the suit provided certain conditions laid down by them were fulfilled. However, nothing seems to have materialised because those conditions were not fulfilled. In the circumstances the plea of estoppel
B raised by the defendants had no substance in it and was rightly given up at the time the appeal was argued before us."

In the light of the abandonment of the plea, no weight can be attached to its repetition in this Court, apart from the lack of intrinsic substance in the submissions.

C Let us have a close look at the terms and conditions of the donation and spell out their legal effect. The law of gifts is, in a sense, a collection of equitable principles but crystallised for India under the British from Anglo-Saxon jurisprudence. Since Independence collections from the public have escalated and in India to-day popular contributions to public charitable purposes are a new dimension of
D community involvement in developmental activities. And so the rule of law must rise to this rule of life by facilitating the fulfilment of benevolent objects but vigilantly guarding against perversion, diversion, subversion, inaction and unjust enrichment, where public donations have been raised. The law of charitable trusts must undergo an evolutionary adaptation to Indian social environs, illumined of course by the well-settled rules in this branch of jurisprudence
E developed over the centuries by great English judges. Maitland's remark is valid even now for us : "Of all exploits of Equity the largest and most important is the invention and development of trust."

The principles relevant for our case may now be considered. Was the contribution of Rs. 30,000/- for a *charitable* purpose ? Lord
F Sterndale, M. R., said in the Court of Appeal in *In re Tutley*(1) :

> "I....am unable to find any principle which will guide one easily, and safely, through the tangle of the cases as to what is and what is not a charitable gift. If it is possible I hope sincerely that at some time or other a principle will be laid down. The whole subject is in an artificial atmos-
G phere altogether."

While in India we shall not be hidebound by English decisions on this point, luckily both sides agree here—and that accords with the sense of the law—that a hospital for women is a charitable object, being for medical relief. Moreover, the beneficiaries are a section of the public, women—that still silent, suffering half of
H Indian humanity. Therefore, this elecent connotes a public trust. The next question is whether the Indian Trusts Act, 1882, applies

1. (1923) 1 Ch. 258, 266.

to the present case. The Courts below have argued themselves into an application of s. 83 of the Trusts Act. Sri Dixit rightly objects to this course because that Act relates only to private trusts, public charitable trusts, having been expressly excluded from its ambit. But while these provisions *proprio vigore* do not apply, certainly there is a common area of legal principles which covers all trusts, private and public, and merely because they find a place in the Trusts Act, they cannot became 'untouchable' where public trusts are involved. Care must certainly be exercised not to import by analogy what is not germane to the general law of trusts, but we need have no inhibitions in administering the law by invoking the universal rules of equity and good conscience upheld by the English Judges, though also sanctified by the statute relating to private trusts. The Court below have drawn inspiration from s. 83 of the Trusts Act and we are not inclined to find fault with them on that score because the provision merely reflects a rule of good conscience and of general application. The details of the argument on the basis of this principle will be discussed a little later.

Accepting that Dubey intended a charitable gift the first question that falls for decision, as preliminary to the application of the *cypres* doctrine, in as to the nature of the charitable object—whether general or specific. If the former, the doctrine is attracted but if the latter it is repelled. We will revert to this aspect later.

Sri Garg objected to the application of the *cypres principle* to cases of gifts as, in his view, only wills attract this jurisdiction. There is much in the precedents tending this way but the opposite is not bereft of authority. *Nori Venkata Rama Dikshitulu* v. *Ravi Venkatappayya*(1) and *Potti Swami* v. *Rao Saheb D. Govindarajulu*(2), for instance, are two authorities in the same volume supporting the rival positions. We have come across other cases, Indian and English, where even gifts *inter vivos* have been enforced *cypres* by courts although the general run of trusts where failure has been saved relates to testamentary dispositions. There is perhaps a reason. Why courts should, in the case of wills, step in to supply a near intent and apply the funds *cypres* where otherwise the charity will fail on sticking to the literal object, the author being dead and unable to speak. For gifts *inter vivos*, the donor is ordinarily available to suggest the mutation in the event of impossibility or impracticability of the original object. Even so, we are inclined to the view that, both testamentary and non-testamentary gifts for public charitable purposes must be saved by a wider intervention of court, for public interest is served that way. Neither principle nor precedent bars this broader invocation of the court's beneficant jurisdiction. But there are two other limitations on the *cypres* doctrine which come into play here. Where the donor has determined with specificity a special object or mode for the course of his benefaction the Court cannot innovate and undo, but where a general charitable goal is projected and particular objects and modes are indicated the Court,

(1) A.I.R. 1960 A.P. 35. (2) A.I.R. 1960 A.P. 605.

A acting to fulfil the broader benevolence of the donor and to avert the frustration of the good to the community, reconstructs, as nearly as may be, the charitable intent and makes viable what otherwise may die. The judges have set this restraint on their power to resurrect, or rather to vary and validate. The twin conditions to be satisfied are :

B "(1) The settlor must, in general, have shown a *general charitable intention*....It will only apply where the original trust has failed *ab initio*. The absence of a general charitable intention will not be fatal to those trusts which have taken affect but have failed....Once money has been effectively and absolutely dedicated to charity, whether in pursuance of a general or a particular charitable intent, the C testator's next of-kin or residuary legatees are for ever excluded....This will mean that the material date for the purpose of deciding whether the *cypres* doctrine is applicable is the date when the trust came into effect (e.g. in a will, on the death of the testator)."

D (2) The second condition for the application of the *cypres* doctrine used to be that it was or had become "impossible" to carry out the settlor's intention; or alternatively that a surplus remained after fulfilment of the purpose...."(1).

In short, there must be a larger intention to give the property, in the first instance; secondly, there must be impossibility not in the E strict physical sense but in the liberal. diluted sense, of impractibility. Even here it must be mentioned, however, that the *cypres* application of the gift funds assumes a completed gift. It is essential that a gift has been made effectively before its actual implementation by application of the funds, literally or as nearly as may be, arises.

Parker, J., as he then was, in *In re Wilson*(2) stressed the pre- F sence of a paramount general intention as distinguished from a particular limited purpose. "Where, on the true construction of the will, no such paramount general charitable intention can be inferred, and where the gift, being in form a particular gift,—a gift for a particular purpose—and it being impossible to carry out that particular purpose, the whole gift is held to fail."

G We need not deal with cases of anonymous donors, for in those cases the Court would be inclined to read a general intention in favour of charity. In *In re Ulverston and District New Hospital Building Trust*(3) the Court held that in the case of a certain fund collected with the sole object of building and maintaining a new hospital and not for the general charitable purpose of improving facilities for medical and surgical treatment in the districts to be served by the H

(1) The Modern Law of Trusts-Parker and Mellow-2n edn. pp 204,208.
(2) (1913) I Ch. 314.
(3) (1956) 1 Ch. 622..

hospital, no general charitable intent could be imputed to the donors and that the particular charitable purpose for which the fund was intended having failed *ab initio,* the money in the hands of the trustees received from indentifiable sources was held on resulting trusts. A

The Privy Council in an Indian case, *Commissioner, Lucknow Division* v. *Deputy Commissioner of Partapgar*(1) had to deal with the subscriptions paid to a committee (for the purpose of fulfilling a specific and (well-defined charitable purpose which could not be carried out on account of impracticability. Lord Maugham observed that "there is no general charitable intent shown in this case and that the subscriptions were paid to the committee for the purpose of fulfilling a specific and well-defined charitable purpose *and that only.*" (Emphasis supplied). He further observed: B

> "The money having been paid over to the committee, a complete trust was created to apply the funds in carrying out the object mentioned. If the object has become impracticable, the subscribers....have a clear right to the return of their subscriptions *pro rata*....The present members of the committee....are trustees in either event; in the event of impracticability being shown, they are trustees for the subscribers; if, on the other hand, impracticability is not shown, they still have to carry out the trust." C D

Lord Herschell, L.C., in the case of *In re Rymer*(2) laid down the law early in the day and it holds good even to-day. On a construction of the document before the Court the bequest was read as meant to benefit a particular institution and not a general class in a general way, and, that institution having ceased to exist in the testator's lifetime, the legacy could not be applied *cypres,* but lapsed and fell into the residue. The proposition as laid down in that decision with precision is just this : E

> "There is a distinction well settled by the authorities. There is one class of cases, in which there is a gift to charity generally, indicative of a general charitable purpose, and pointing out the mode of carrying it into effect; if that mode fails, the Court says the general purpose of charity shall be carried out. There is another class, in which the testator shows an intention, not of general charity, but to give to some particular institution; and then if it fails, because there is no such institution, the gift does not go to charity generally; that distinction is clearly recognised; and it cannot be said that wherever a gift for any charitable purpose fails, it is nevertheless to go to charity." (Passage exerpted in the judgment from *Clark* v. *Taylor*(3). F G

Mr. Garg's contention is that there is no general charitable intention in the present case while Mr. Dixit plausibly urges that Shri H

(1) A.I.R. 1937 P.C. 240.
(2) (1895) 1 Ch. 19, 31.
(3) 1 Drew. 642;644.

A Dubey wanted his townsmen to enjoy the facility of a "female hospital". However, the findings of the courts below negatives any such general intention to benefit the community and the old man while donating a large sum had taken care to particularise that the female hospital should be a six-bedded one on a chosen spot to be constructed by himself with matching contribution from government and other B voluntary donations. We are inclined to think that this is a borderline case and, if at all, we should lean in favour of the charity taking effect by imputing, without some legal straining, an intention to help the people of the area with a maternity hospital.

This does not see the end of the matter because we have to begin by asking whether there is a gift in existence. Then alone the object C being general or specific and the application of the *cypres* doctrine, etc., will arise. This takes us to the primary contention of Mr. Garg that Shri Dubey made a conditional gift and the conditions not having been fulfilled it just did not take effect. We see considerable force in this contention and will proceed to examine it.

There may be cases where a donor makes a gift for a specific D charitable purpose, the performance of which is rendered impossible. In such cases courts have to consider the gift as a conditional one (vide the ruling in *Harish Chandra* v. *Hindu Sharma Sewak Mandal*(1). In that case as the gift had failed the land reverted to the successor-in-title to the donor.

The University of London was minded in 1902 to found an insti- E tute of medical sciences and appealed for funds in that behalf. One donor responded by making a handsome gift by his will. Unfortunately, the supervening circumstances prevented the proposed scheme for an institute of medical sciences coming to pass. The question arose as to what should happen to the gift. Farewell, L.J., observed in this context in *In re University of London Medical Sciences Institute Fund*(2).

F

> "I do not think that anybody who was not a lawyer could for one moment doubt that the University were bound to return at once to the living subscribers the moneys which had been sent to them for a scheme which they had abandoned; but we are asked to say that although that may be so—and G I am not sure whether the Attorney-General admits it or not —we ought to construe a will, which contains words in all probability similar to those which the testator wrote in every letter in which he enclosed a subsription, as showing an intention to give this money for general charitable purposes and not to the particular institute *conditionally* upon that institute being called into existence. I am wholly unable to H follow Mr. Sergant's suggestion founded on a contract between the parties.When money has once been paid ever to the

(1) A.I.R. 1936 All 197. (2) (1909) 2 Ch. 1;8-9,

trustees in the lifetime of the donor a complete trust is created, and the money must be held on the trusts declared by the donor; the right of the donor to a return of the money arises when the trust is on the face of it *contingent* on the proposed institute being called into being.(I can see to diffence between that case and the case of the testator. *It is well settled law that a legacy may be given to a charity upon a condition, which condition may be express or implied, precedent or subsequent.*" (emphasis supplied).

In this connection reference may also be made to *In re White's Trust*(1) where we may glean the same law laid down.

The law has been correctly stated by Delany (The Law relating to Charities in Ireland) at p. 128 thus :

"if a gift is made to a charity on a contingent event and the happening of the even is a condition precedent to the gift then, if the condition is too remote or for any other reason illegal, the gift to the charity is void. This has been expressed by Melborne L.C. in *Chamberlayne* v. *Brockett*(2) in the following words : "If the gift in trust for the charity is itself conditional upon a future and uncertain event, it is subject, in our judgment, to the same rules and principles as any other estate depending for its coming into existence upon a condition precedent. If the condition is never fulfilled, the estate never arises,....

Tudor on Charities sums up the law in one sentence :

"*Condition precedent* : Where the charitable intention is subject to a condition precedent which is not satisfied, the charitable gift fails to take effect." (p. 132)

In Halsbury's Laws of England (3rd edn.) the rule has been thus expressed :

"Where, however, the particular mode of application prescribed by the donor was the essence of his intention (which may be shown by a condition or by particularity of language) and that mode is incapable of being performed, there is nothing left upon which the Court can found its jurisdiction, so that in such circumstances the Court has no power to direct any other charitable application in place of that which has failed." (p. 3'18; para 654)

So much so, although a charity once established does not die (though its nature may be changed) the gift must first take effect which takes us to the question of conditional gifts. The law is clear in this area and is found stated in Halsbury :

"611. *Conditions precedent* : A charitable gift may be made subject to conditions precedent, as that the institution

(1) [1886] Ch. Div. 449. (2) L.R. 8 Ch. 206;211.

A which is too benefit shall perform some act or that if the trust is declared unlawful it shall revert, or that the gift shall take effect only if the testator's estate be sufficient for the intended object, or amount to a certain sum or that a bequest to a hospital shall not take effect if at the testator's death the hospital has ceased to be run on a voluntary system
B and come under state control, or if it comes under government control. The gift fails if the condition precedent is impossible, or is not satisfied, or need not be fulfilled within the perpetuity period.

A legacy to a fund which has been raised for the purpose of effecting a particular charitable object is construed as a gift to take effect upon the happening of a condition precedent,
C namely, the effecting of that particular object." (pp. 295-96)

. . . . . .

"613. Acceptance of conditional gift. Where a gift subject to a condition is accepted the condition must be fulfilled whether the subject-matter of the gift is adequate for the purpose or not...."

D In the law of real property the vesting of an estate can be made to depend on a condition precedent and the transfer fails if the contion is not fulfilled (c.f.ss. 25 & 26, T.P. Act). We may sum up the situation now. If the donation by Dubey was conditional the Government was a mere custodian of the cash till the condition was complied with and if the performance thereof was defeated by Government,
E the gift did not take effect.

The factual findings, as already set out, leave no doubt in our mind that the transaction was not a gift *simplicitor* but was subject to the matching grant from Government, building having to be made with such augmented amount by Shri Dubey, etc. Assuming substantial compliance as sufficient in law, the defendant has no case that any of the conditions has been carried out, not even the equal con-
F tribution from the State exchequer without which the construction of the hospital would have been a half-done project. Thus the conditions failing, the charity proved abortive, and the legal consequence is a resulting trust in favour of the donor. The State could not keep the money and the suit was liable to be decreed. The Kannauj community, as the happy sequel to this unhapy litigation has turned out, has now
G got a bigger hospital and a memorial college.

Shri Dixit has prayed for the dismissal of the suit for non-joinder of other donors and the charity. We mention it out of deference to counsel but negative it as undeserving of consideration. The appeal fails and we dismiss it with costs, an added injury to the public exchequer which we regret we cannot help. May we hazard the hope that out of deference to the memory of Gomti Devi in in posthumous
H furtherence of Dubey's project, the plaintiffs will donate the costs when realised to the charity chest of the Kannauj Female hospital.

V.P.S. *Appeal dismissed.*