

BRITISH COUNCIL
v
COMMISSIONER OF LABOUR

COURT OF APPEAL
TILAKAWARDENA, J.
WIJEYARATNE, J.
CA 1229/2000
JULY 23, 2003

Writ of Certiorari – Employees Provident Fund Act, No. 15 of 1969 – No liability to pay E.P.F. by charitable institutions prior to 1991 – Income Tax Ordinance, Amendment Act, No. 44 of 1958 – Charitable Institutions – Trust Ordinance – Section 99 – British Council – Is it a charitable Institution?

The 3rd respondent a former employee of the petitioner had commenced employment as a Librarian in 1965 and had retired in March 1996. The 3rd respondent claimed EPF contributions from 9.3.1965 to 31.12.1983. The 1st

respondent directed the petitioner to pay the said contribution.

Held:

- (i) In terms of the Regulations to the EPF Act, No. 15 of 1969 there is no liability to make EPF contributions with regard to persons employed in any charitable institution or any institution maintained solely for the purpose of religious worship or social service.
- (ii) Petitioner is a charity under the Charitable Act 1960 (English). It is clear that the Council is established for the purpose of advancement of knowledge and for developing closer cultural relations. These objections fall within the definition "Advance of education or knowledge, and beneficial or of interest to mankind (Trust Ordinance)". Therefore, it is apparent that the British Council is a charitable institution and is not liable to make contributions to the EPF of the 3rd respondent for the period 1965 to February 1984.
- (iii) The amendment introduced in 1991 to the EPF Act, provides that EPF contributions should be paid in respect of employees employed in charitable institutions, if such institution employs over 10 persons. The amendment does not apply to the instant case.

APPLICATION for a writ of certiorari.

Cases referred to:

1. *IRC v Pemsel* – 1891 AC 531
2. *IRC v Educational Grants Association Ltd.* – 1967 3 WLR 41.
3. *W.K.A. Fernando v British Council* – CA 213/90 – not followed.

*Dr. Jayampathy Wickremaratne P.C. with Ms Pubudini Wickremaratne
M.R. Ameen S.C.*, for 1st and 2nd respondents.

3rd respondent absent and unrepresented.

Cur. adv.vult.

September 18, 2003

SHIRANEE TILAKAWARDANE, J. (P/CA)

Vide Journal Entry datèd 16/07/2003. Parties have agreed to consolidate C.A. 1228/2000 and 1229/2000 as one judgment. 01

The petitioner has preferred this application seeking a *writ of certiorari* to quash the determination of the 2nd respondent dated 23/05/2000 (P12) and also to quash the final notice dated 25/08/2000 (P14). The petitioner has also prayed for a *writ of prohibition* restraining the 1st and 2nd respondents from enforcing the determination of the 2nd respondent dated 23/05/2000. It has been admitted by all parties that the petitioner is a body corporate duly established by Royal Charter in 1940 in the United Kingdom and as a charity under the United Kingdom Charities Act of 1960. The 3rd respondent, a former employer of the Petitioner had commenced employment as a librarian in or about 1965 and had retired on 31/03/1996. On or about 1997, the 3rd respondent by letter dated 04/06/1997 sent to the Director of the Petitioner Council, had claimed the arrears of contributions to the Employees Provident Fund in respect of the period 1965 to 1984. The 3rd respondent had thereafter made a complaint to the 1st respondent by letter dated 27/09/1997 alleging that the petitioner had failed to make E.P.F. contributions in respect of the 3rd respondent from 09/03/1965 to 31/12/1983. 10 20

Parties agreed that the only issue that has to be decided in this case is whether the petitioner can be considered as a Charitable Institution for the purpose of making E.P.F. contributions in respect of the 3rd respondent prior to the amendment introduced in 1991 to the Employees Provident Fund Act. Regulation 38 (d) made under the Employees Provident Fund Act published in the Government Gazette No. 14936 dated 11/12/1970 provides that there is no liability to make contributions to the Employees Provident Fund by Charitable Institutions in respect of employees of such institutions. However the amendment introduced in 1991 provides that E.P.F. contributions should be paid in respect of employees employed in Charitable Institutions, if such institution employs over 10 persons (Vide Government Gazette bearing No. 653/16 dated 14/03/1991). 30

It is admitted that the petitioner had commenced making contributions to the E.P.F. on a voluntary basis with effect from 01/01/1984 and the 3rd respondent also opted to contribute to the same when it was offered to her.

According to the Royal Charter the objects of the aforesaid 1st petitioner Council are to promote a wider knowledge in the United Kingdom and to develop closer cultural relations for the purpose of benefiting the British Commonwealth. The Charter further provides that "the income and property of the British Council wheresoever derived shall be applied solely towards the promotion of the objects of the British Council as set forth in this Charter, and no portion thereof shall be paid or transferred directly or indirectly by way of dividend, bonus or otherwise howsoever by way of portion to the members of the Council." 40

In terms of the Regulations dated 11/12/1970 (contained in Government Gazette 14936 adverted to above) the Employees Provident Fund Act, No. 15 of 1969, there is no liability to make E.P.F. contributions with regard to persons employed in any Charitable Institution or any institutions maintained solely for the purpose of religious worship or social service. The Amending Act, No. 44 of 1958 to Income Law Ordinance defines the Charitable Institution as a trustee or trustees of a trust or a corporation established for a charitable purpose only or engaged solely in carrying out a charitable purpose. Charitable purpose is defined as a purpose for the benefit of the public or any section of the public in or outside Ceylon or any of the following categories. 50

1. The relief of poverty.
2. The advancement of education or knowledge
3. The advancement of religion or the maintenance of religious rites and practices.
4. Any other purpose beneficial or of interest to mankind not falling within any of the preceding categories. 60

Section 99 of the Trust Ordinance defines charitable trust as "for the benefit of the public or any section of the public within the island of any of the following categories. 70

1. for the relief of poverty; or
2. for the advancement of education or knowledge; or
3. for the advancement of religion or the maintenance of religious rites and practices; or
4. for any other purposes beneficial or of interest to mankind not falling within the preceding categories."

Even when perusing the objectives of the petitioner Council it is clear that the Council is established for the purpose of advancement of knowledge about the United Kingdom and for developing closer cultural relations. These objectives fall within the definitions "advancement of education or knowledge and beneficial or of interest to mankind."

Moreover the petitioner is also registered as a charity under the Charities Act No.1960. (Mohamed Ramjohn, Soucebook on Law of Trusts Chapter 15 Page 509 states that "the effect of registration creates the conclusive presumption of charitable status." Section 4 (1) of Charities Act 1993 provides "an institution shall for all purposes other than rectification of the register be conclusively presumed to be or to have been a charity at any time when it is or was on the register of Charities."

Lord McNaughten in *IRC v Pemsel*(1) defines charitable purposes comprising of four principal divisions. These are trust for relief of poverty, trust for the advancement of education, trust for the advancement of religion and trust for other purposes beneficial to the community.

Lord Denning in *IRC v Educational-Grants Association Limited*(2) states "A long line of cases show that a trust is for the public benefit if it is for the benefit of the community or section of the community." The objectives of the petitioner provided for in the Royal Charter falls under the categories, the advancement of education and purposes beneficial to the community.

It is to be noted that in the case of *W.K.A. Fernando v The British Council* (3)(C.A. Application bearing No. 213/90) Court has not addressed the issue whether the petitioner is a Charitable

Institution which should have exempted the petitioner from making contributions to the E.P.F.

Therefore this Court finds that the petitioner is a Charitable Institution and is not liable to make contributions to the E.P.F. in respect of the 3rd respondent for the period 1965 to February 1984. Accordingly, the application of the petitioner is allowed and this Court grants *writ of certiorari* quashing the determination of the 2nd respondent dated 23/05/2000 and the final notice dated 25/08/2000 issued in pursuance of the said determination. The application is therefore allowed with costs in a sum of Rs. 5000/-.

WIJEYARATNE, J. - I agree.

Application dismissed