

Appeal No. VA97/5/027

AN BINSE LUACHÁLA
VALUATION TRIBUNAL
AN tACHT LUACHÁLA, 1988
VALUATION ACT, 1988

Northside Community Enterprises Ltd.

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Office at Lot No.12A.13ABCDE/17; Kilnap, Commons, County Borough of Cork.

Exemption - Charitable purposes

B E F O R E

Con Guiney - Barrister at Law

Deputy Chairman

Finian Brannigan - Solicitor

Member

George McDonnell - F.C.A.

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 15TH DAY OF MARCH, 1999

By Notice of Appeal dated the 15th August 1997, the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £125 on the above described hereditament.

The Grounds of appeal as set out in the Notice of Appeal are that "the property should be exempt from rates under Section 63 of 1838 Act and Section 2 of the 1854 Act."

The relevant valuation history is that a valuation of £125 was placed on the subject hereditament on 8th day of November 1996. At appeal stage quantum was not an issue and the only issue raised was the claim for exemption. The claim for exemption was rejected by the Commissioner in a decision issued on 18th July 1997.

The premises is housed in part of what is now known as the Sunbeam Industrial Park, the former Sunbeam Wolsey factory on the Mallow Road, Cork. The building, the subject of this appeal, extends to a total area of approximately 16,000 sq. ft. and is located in the ground floor of the building.

The building is laid out in a series of partitioned training rooms each of which house a separate training module.

A written submission on behalf of the appellant prepared by Mr. F. M. O'Donnell, B.Agr.Sc. FIAVI MIREF, Principal of Frank O'Donnell & Company, Valuation and Rating Consultants was received by the Tribunal on 9th April 1998. Mr. O'Donnell is a former District Valuer in the Valuation Office and he has over thirty years experience in the practice of valuation.

Accompanying Mr. O'Donnell's written submission was a copy of the memorandum and articles of association of Northside Community Enterprises Ltd. and copies of written statements made by Fr. John O'Donovan, Ms. Noreen Hegarty and Mr. Denis O'Donovan respectively founder, manager, and director of the appellant company.

A written submission on behalf of the respondent prepared by Mr. Francis Twomey, District Valuer was received by the Tribunal on 7th day of April 1998.

The appeal proceeded by way of an oral hearing, which took place in the Conference Centre, Fitzpatrick's Silversprings Hotel, Tivoli, Cork on 6th May 1998.

Mr. David Holland B.L. instructed by Mr. Brian O'Shea, Solicitor appeared for the appellant.

Ms. Siobhan Lankford B.L. instructed by the Chief State Solicitor appeared for the respondent. During the course of the hearing Mr. Holland put in evidence the directors report and financial statements for the forty-two months ended 31st December 1996 with respect to the appellant company. Ms. Lankford asked the Tribunal for a short adjournment to consider the accounts and this was duly granted by the Tribunal.

Mr. Frank O'Donnell in his sworn testimony adopted his written submission as his evidence to the Tribunal.

In his continuing evidence Mr. O'Donnell stated the appellant company had its origins in an organisation set up in 1989 by Fr. John O'Donovan. This organisation had been established to deal with unemployment in the north side of Cork City.

Mr. O'Donnell said that all the activities he had seen carried on in the subject premises were to help the unemployed and he instanced the laundry and restaurant there. The restaurant had trained waiters and cooks and was used as a canteen by the staff. The laundry was used mostly for the staff of the appellant company and its trainees.

He said that a side effect of these activities is that some money is earned. The primary purpose of the activities carried on at the appellant's premises was to help the unemployed take their place in society and any money earned was secondary. Mr. O'Donnell stated that commercial activities in the true sense are not carried on there.

Mr. O'Donnell then turned to deal with the memorandum and articles of association of the appellant company. He referred to page two of his written submission, which contained paragraphs, four and five of the memorandum and Articles of Association. Paragraph four provides inter alia that on a winding up that any property left after paying all debts and liabilities may only be distributed to some other similar charitable institution. Again paragraph five prevents any member of the company deriving private profit from it.

Mr. O'Donnell stated he was familiar with other organisations, which had obtained exemption from the payment of rates. He cited the Limerick Youth Services Board. This was a voluntary non-profit making organisation. It engaged in providing training and education for young people from a disadvantaged area of Limerick City.

Mr. O'Donnell referred to the Rehab training centres. He had not been professionally involved in the Rehab centres but he stated these properties together with retail outlets were exempt.

Again S.T.E.P. enterprises (St. John of God, Training, Education and Placement) were exempt. This organisation makes furniture and does landscaping. The primary purpose is to train slightly mentally handicapped people. The fact that the organisation sells goods is secondary to this.

Mr. O'Donnell stated the appellant company is similar to all the exempt comparisons he had referred to.

Under cross-examination by Ms. Lankford, Mr. O'Donnell admitted that the appellant company operated a large number of training schemes. This included providing training for people with degrees.

Again under cross-examination Mr. O'Donnell stated that the appellant operated a canteen and laundry and also provided alarm installation for the elderly.

Mr. O'Donnell agreed under cross examination that Oxfam shops, St. Vincent De Paul shops and the portion of the Rehab shop at South Great Georges Street and Dame Street used to sell lottery tickets were rateable.

On re-examination by Mr. Holland, Mr. O'Donnell distinguished between the Oxfam and St. Vincent De Paul shops and the Rehab shops. The former shops are fund raising enterprises to support their particular charity while the latter shops are an integral part of the charity. That is in the case of the Rehab shop it sells the product made in the Rehab training workshops.

Mr. O'Donnell stated that the subject was similar to the Rehab shops in as much that the laundry and restaurant there sold the products and services of the people trained there.

Fr. John O'Donovan c.c. gave sworn evidence on behalf of the appellant. He said he was the training and development officer for the organisation.

He said he had been the founder of the organisation. In the past, when he was a curate on the North Side of Cork City he had seen in his visits to people's homes the effect of long term unemployment. The area he had visited contained a large number of local authority houses. Unemployment in these areas had reached 70%.

He said he had developed schemes in his organisation by analogy with the Fás Community Employment Schemes.

Fr. O'Donovan said the focus of his organisation was to help the long-term unemployed, that is people unemployed for more than twelve months. These people had lost their self-confidence and the appellant company tries to raise their self-esteem.

He said that the appellant employs 235 people of whom sixteen are supervisors. The supervisors come from varied backgrounds but the remainder comes from a background of long-term unemployment. These long-term unemployed are given a twelve-month contract and he said that they are treated as employees for insurance purposes.

In his continuing evidence Fr. O'Donovan said the sixteen supervisors were paid salaries by Fás. The rest of the employees receive Fás grants. These grants are much lower than rates of pay prevailing in the commercial sector.

Fr. O'Donovan said that 184 of their part time employees gain work experience and training over their twelve-month contract; eight months being work experience and four months being training. 90% of these employees work at the appellant's premises, in the laundry and the canteen for example.

Fr. O'Donovan described the operation of the laundry. Its services were not advertised. There was a charge for cleaning items. The service was available to unemployed people and people on site at Sunbeam.

He described the canteen as having low prices and being available to all community employment programme personnel and unemployed people on the site at Sunbeam.

Fr. O'Donovan in further evidence described the operation of the alarm installation scheme. In two years of operation 260 alarms and 1,600 security devices had been installed in the North of Cork City and in the county. The scheme was financed by a 90% grant from the Department of Social, Community and Family Affairs. The remaining 10% had to be found by the appellant company. The Department laid down very strict guidelines for the installation of the alarms. They were only available to people over 65 living on their own. On the death of a recipient the Department insists that the alarms are given to another qualifying person. Finally the installation of the alarms gives the appellant's employees some useful training.

Fr. O'Donovan said that the appellant in its training role dealt with the National Council for Vocational Awards. The training provided was at the Councils Foundation, Level 1, which was the equivalent of Junior Certificate level.

He said that education levels were low on the north side of Cork City and this prevents people from obtaining employment.

Finally in his direct evidence Fr. O'Donovan stated that any money the appellant made from its activities was re-invested in the organisation.

Under cross-examination by Ms. Lankford Fr. O'Donovan said that the appellant's restaurant was available to everyone on the Sunbeam site. There were a number of other enterprises on the site. Again when Sunbeam Knitwear was operating on the site their employees could use the

restaurant, although Fr. O'Donovan stated that these employees were working a three-day week and receiving social welfare payments.

Ms. Lankford put it to Fr. O'Donovan that the educational courses offered to National Council for Vocational Awards standards, by the appellant, were similar to the courses available at other educational institutions in Cork. In reply Fr. O'Donovan said that what was provided by the appellant was different to the extent that it offered work experience in addition.

Fr. O'Donovan also said that 35 people are employed on a job initiative scheme. This is a Fás scheme where the employees are given a three year contract. Prior to joining the scheme they must have been unemployed for five years.

Under further cross-examination by Ms. Lankford, Fr. O'Donovan stated that the laundry and the canteen might indirectly benefit the better off.

Ms. Noreen Hegarty gave sworn testimony on behalf of the appellant. She stated that she had first joined the appellant as a volunteer. In 1993 she was appointed as a Fás supervisor. She had been appointed manager of the appellant company in early 1994. Her wages were paid by Fás. These wages like those of the other fifteen supervisors were at an ordinary commercial level.

The tasks of supervisors were of a dual nature. They trained participants in the community employment programme and they also supervised the projects in which the employees were engaged. Part of the training function is to put together a training plan for employees and ensure that the employees receive this training.

Ms. Hegarty then referred to the education provided by the appellant. Generally it provided foundation courses at level one for the purposes of the National Council for Vocational Awards. The recipients of education are over twenty-one and must have been unemployed for one year. These recipients are assessed by Fás and the Department of Social, Community and Family Affairs before being accepted on the education programme. Ms. Hegarty stated that the appellant is not in competition with other educational institutions in Cork.

Ms. Hegarty referred to the accounts for the appellant company for the forty-two months ended 31st December 1996. These accounts had been audited by McGinn O’Riordan & Co., certified accountants of 5 Verdon Row, Wellington Road, Cork. This set of accounts was required for the purpose of securing the appellants recognition by the Revenue Commissioners as a charity.

Ms. Hegarty gave evidence as to the sources of the figure for donations of £24,616 on page 5 of the accounts. These sources included St. Patrick’s Poor Sick Society and also Credit Unions. Another source of fund raising was a race night, which amounted to £7,498.

Ms. Hegarty referred to the crèche income of £30,007. This crèche was designed to enable employees of the appellant to avail of its services without paying high childcare fees. She said the charges at the crèche were lower than the commercial rates. The crèche was used by the appellant’s employees, other persons on community employment programmes in the area, and the unemployed.

The crèche also provided work experience in childcare for those receiving education and training in that field from the appellant.

When asked to sum up the purposes of the appellant company Ms. Hegarty stated it was to help the long-term unemployed gain employment. Again the appellant tried to raise the self-esteem of persons who may never gain employment. Ms. Hegarty also said the appellant tries to help lone parents avail of its services including the crèche.

Under cross-examination by Ms. Lankford, Ms. Hegarty stated that the appellant’s restaurant is not encouraged to compete with other restaurants in the commercial sector. The canteen does not advertise its services, for example.

Under further cross-examination Ms. Hegarty referred to the figure for gross profits of the canteen disclosed at page 5 of the accounts. This figure was £20,341. Ms. Hegarty said there were 30 to 35 people working in the canteen. It would be impossible to pay their wages out of

£20,341 and Fás paid the wages of these employees. Ms. Hegarty added that the wages of the employees in the laundry and the crèche are also paid by Fás.

Ms. Hegarty was cross-examined as to other income sources shown on page 5 of the accounts. She said the laundry had only recently started at the time of the preparation of the accounts and had produced income of £438. The gross cutting income of £3,236 arose from providing this service to schools and churches at a nominal fee. The service has now been discontinued. Again the income from the distribution of newsletters of £3,374 arose from distributing newsletters in parishes on the north side of Cork City.

Ms. Hegarty was then cross-examined as to the educational courses provided by the appellant. These included computer applications and desktop publishing, secretarial courses, and theatre studies. Ms. Hegarty agreed that these courses were provided by the commercial sector of the economy. She stated that the employees of the appellant could not afford to pay the private sector rate for these. She gave as an example the computer-training course. Her employees had £300 a year to spend on computers and received computer training for a year. In the private sector a days training in computers would cost £300.

Finally under cross-examination Ms. Hegarty stated the employees taken on by the appellant would have been receiving social welfare payments which included unemployment benefit payments as well as unemployment assistance payments.

Mr. Twomey gave sworn testimony on behalf of the respondent. He adopted his written submission as his evidence to the Tribunal.

Under cross-examination by Mr. Holland he confirmed that the appellant's charitable status had been recognised by the Revenue Commissioners.

Prior to the hearing of legal submissions Counsel for both parties agreed as to the legal basis on which exemption from the payment of rates was being sought. These were the two provisos under Section 63 of the Poor Relief (Ireland) Act 1838 namely (a) property used exclusively for the education of the poor and (b) property used exclusively for charitable purposes.

In her legal submissions Ms. Lankford stated that the provision in Section 63 of the 1838 Act for charitable exemption from the payment of rates was narrowly construed in Irish Law. She said the three principal authorities were *O'Neill –v- Commissioner of Valuation*, 1914 2 I.R. 447, *McGahon & Ryan –v- Commissioner of Valuation* 1934 I.R. 736 and *Barrington's Hospital –v- Commissioner of Valuation* 1957 I.R. 299.

Ms. Lankford stated that the education exemption applies only to education exclusively for the poor. She said the appellant provided a wide range of education and training similar to that provided by secondary schools and private colleges.

Again Ms. Lankford drew attention to the status of the beneficiaries who received the education provided by the appellant. A wide range of people were involved. Some people had been in receipt of social welfare benefit prior to joining the appellant's educational courses. Again the appellant did not apply any means test to those joining the courses. Ms. Lankford submitted the education provided by the appellant could not properly be described as education exclusively for the poor.

Ms. Lankford submitted that the activities carried on by the appellant such as the laundry, canteen, distribution of the newsletter, and grass cutting are not in themselves charitable. They are capable of generating profit.

In support of this contention she quoted the Good Shepard Nuns case, 1930, I.R. 646. In that case an industrial school and Magdalene home operated by the nuns was held to be exempt from the payment of rates but the adjoining laundry was not granted exemption because it was held to be operating on a commercial basis.

Ms. Lankford submitted that both the laundry and the canteen at the appellant's premises were competing with similar entities in the private sector and were capable of generating profits.

Ms. Lankford referred to the £12.00 per week per person material allowance paid by Fás. She said the appellant was the ultimate beneficiary of this payment. This payment brought the appellant within the parameters of the Magee College case decided in the 1870's.

Finally Ms. Lankford referred to the memorandum and articles of association of the appellant company. The company is not prohibited from making profits but is only obliged to re-invest these profits in the company.

In his legal submissions Mr. Holland addressed the issue that in Irish Law charitable purposes is narrowly construed. It was Mr. Holland's contention that general charitable purposes must be construed strictly only in relation to the objects which are specifically enumerated in Section 63 of the Poor Relief (Ireland) Act 1838. It was Mr. Holland's further contention that certain of the charitable purposes enumerated in Commissioners for Special Purposes of Income Tax –v- Pemsel 1891 A.C. 531 lay outside the objects mentioned in Section 63 and therefore were not subject to a narrow construction for the purposes of seeking exemption from rates on charitable grounds. Mr. Holland cited the Barrington's hospital case at pages 326, 327 and 328 for this proposition.

In this case Mr. Holland said that two charitable purposes named in the Pemsel authority lay outside a narrow construction of Section 63 and were relevant here namely,

- (a) relief of poverty and
- (b) other purposes beneficial to the community, not falling into the other Pemsel categories

Mr. Holland referred to Ryde on Rating at page 308 which stated that charity can be local in its objects as long as there is a public benefit involved.

Mr. Holland quoted from Mr. Delaney's book on charities at page 20, which stated that the definition of charity must be couched in contemporary terms.

The activities carried on at the appellant's premises, in for example the laundry, were to train and equip the unemployed to enter employment. In contemporary terms, in Mr. Holland's submission, the unemployed were the poor. Mr. Holland said the unemployed today were the equivalent of the "poor, succourless, distressed, or impotent persons" mentioned in the Irish Statute, 10 Car.1, Section 3, C.I. and quoted at page 320 of the Barrington's Hospital case.

Mr. Holland said that at page 331 of the Barrington's Hospital case there was authority for the proposition that a charity could derive income from its activities. Again he drew the analogy in the Barrington's Hospital case as to the payment of fees to doctors and the material grants paid to the employees of the appellant. In any event he did not accept that the payment of material grants were fees.

Mr. Holland referred the Tribunal to the general conclusion of the Supreme Court at page 333 of the Barrington's Hospital case and in particular conclusions number two and three as being relevant in this case.

Mr. Holland referred to the Clonmel Mental Hospital v. Commissioner of Valuation 1958 IR page 381. Judge Davitt in the High Court made the point that use for charitable purposes included "manner of user" but also "object and purpose of user". That dictum had not been contradicted by the Supreme Court.

Mr. Holland in referring to the Good Shepherds Nuns case said that the laundry there was operated on a commercial basis. The appellant's laundry was directed towards the needs of the unemployed.

In dealing with the educational exemption Mr. Holland said that the definition of education had to be construed in the wide sense to include training. Work experience was also an aspect of education.

Mr. Holland, in the context of the exemption for education exclusively for the poor, referred to Cardinal Dalton and others v. Commissioner of Valuation, Irish Jurist 1959 page 49.

This was a Circuit Court decision which held that a boys club open to all classes but frequented by sons of working class parents, which carried on activities described as instructional and recreational, was providing on its premises education exclusively for the poor and was therefore exempt from rates.

Mr. Holland referred to two Tribunal decisions – National Association of Widows in Ireland Ltd., (VA88/130) and Limerick Youth Services Board (VA90/3/003). The former was authority for the proposition that the Tribunal should evaluate charitable use in a contemporaneous sense.

The latter decision was authority for the proposition that an entity, which operated a business to re-integrate its trainees into the commercial sector, was entitled to exemption from rates on its property.

Mr. Holland made the point that there were similarities in the memorandum and articles of association of the Limerick Youth Services Board with that of the subject. In fact he suggested that the services provided by the Limerick body were wider in extent than those provided by the subject.

Mr. Holland referred to the Tribunal decision in the Clanwilliam Institute case (VA91/2/067). He suggested that the Tribunal's decision in that case in refusing exemption was that those in control of the appellant could make a private profit by virtue of leasing the appellants premises.

In reply Ms. Lankford referred to Judge Keane's book – The Law of Local Government in the Republic of Ireland. She said at page 291 of the book there is the observation that the categories of charities enumerated in the Pemsel case have never been accepted by the Irish Courts for the purposes of rating exemption.

She referred to a decision of the Tribunal in the Barbara Hegarty, Comhlamh case (VA95/3/015) which discussed the more restricted definition of charity for the purposes of Irish Rating Law.

Determination

The Tribunal has considered the written submissions and the evidence offered by both the appellant and the respondent. The Tribunal has also considered the legal submissions made on behalf of both parties.

The Tribunal finds that the appellant does not provide education exclusively for the poor within the meaning of Section 63 of the Poor Relief (Ireland) Act 1838.

This finding is based on the evidence, which the Tribunal accepts established the following facts:

- (a) the appellant provides education for a wide range of people including those with university degrees,
- (b) the appellant does not operate any means test for the admission of persons to its educational courses and
- (c) some of the persons who had benefited from its educational courses had been prior to receiving this education in receipt of welfare benefit payments while others had been in receipt of welfare assistance payments.

The appellant therefore cannot succeed on this ground in its claim for exemption from the payment of rates.

The Tribunal finds that the hereditament occupied by the appellant is used exclusively for charitable purposes, namely the relief of poverty.

The finding is based on the evidence, which the Tribunal accepts established the following facts:

- (a) that the primary purpose of the appellant is to help the long term unemployed gain employment and thereby provide the most effective means for reducing poverty in the community

- (b) that the appellant provides other helping services to the poor in its area of operation such as the provision of childcare facilities
- (c) the accounts of the appellant clearly show that it cannot be described as a commercial entity dependent as it is almost entirely on funding from a state agency and
- (d) the memorandum and articles of association of the appellant provide that no member of the company can make a private profit from it.

As to the legal position which specifies that the charitable exemption from payment of rates is narrowly construed in Irish law the Tribunal notes the following matters discussed in the Barrington's Hospital case.

One of the general conclusions in that case is that the extent of the narrowness of that construction has never been decided (proposition number 2 at page 333 of the judgment).

The Tribunal also notes at page 324 of the Barrington's Hospital case that the following obiter of Palles C.B. from Clancy –v- Commissioner of Valuation, 1911 2 I.R. 173, is reproduced. “The uniform current of authority in this country has been based (and, as I think rightly) on the word ‘charitable’ as used in this section, being construed in the large sense in which the word is generally used in our law – in the sense in which it had been held to be used in the Legacy Duty Act and in the Income Tax Acts – upon it not being restricted merely to the relief of poverty”.

This obiter of Palles C.B. was made after the Pemsel case but before O’Neill –v- Commissioner of Valuation, 1914 2 I.R. 447. This latter case was the case in which Palles C.B. lead the Court to decide that charitable exemption from payment of rates should be narrowly construed.

In adverting to this obiter of Palles C.B. the Tribunal is not adopting the view that charitable purposes for the relief of poverty should be narrowly construed.

In the Barrington's hospital case the only authority as to the exclusions from charitable purposes refer to any specific charitable purpose named in Section 63 of the Poor Relief (Ireland) Act 1838. Charities for the relief of poverty are not specifically mentioned in the Section. Furthermore Counsel for the respondent did not produce any authority to the Tribunal which showed that charitable purposes for the relief of poverty should be narrowly construed for the purposes of exemption from the payment of rates.

The Tribunal therefore determines that the hereditament occupied by the appellant should be distinguished as being exempt from the payment of rates in as much as its charitable purposes are exclusively directed to the relief of poverty.