

Appeal No. VA99/3/021

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

Dr. Steven's Centre for the Unemployed

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Office at Lot No. 10, 10a, 10b (incl. 19 Lloyds), Church Street, Athlone East Urban, Co. Westmeath.

B E F O R E

Con Guiney - Barrister at Law

Deputy Chairman

Michael Coghlan - Solicitor

Member

Tim Cotter - Valuer

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 15TH DAY OF SEPTEMBER, 2000

By Notice of Appeal dated the 27th day of July 1999, the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £42 on the above described hereditament.

The Grounds of Appeal as set out in the Notice of Appeal are that "the Articles of Association clearly state that the organisation works for the relief of poverty by providing a range of services, i.e. information, computer courses, personal development etc., thus empowering clients to improve their own situation, enabling them to find work, thus relieving some of the poverty otherwise they would encounter."

The relevant valuation history is that the subject was inspected and revised and as a result thereof in November 1988 a rateable valuation of £42 was fixed on the property. In July 1999 the decision of the Commissioner of Valuation on appeal left the rateable valuation unchanged. The Commissioner refused to distinguish the property as exempt from rates.

The only issue before this Tribunal is whether the subject hereditament should be distinguished as exempt from payment of rates.

A written submission prepared by Mr. Malachy Oakes on behalf of the respondent was received by the Tribunal on 2nd May 2000. Mr. Oakes is a District Valuer with over twenty years experience in the Valuation Office.

A written submission prepared by Mr. Anthony Barry, Solicitor, on behalf of the appellant was received by the Tribunal on 8th May 2000. On the same date the Tribunal also received from Mr. Barry the memorandum and Articles of Association of the appellant company. (Athlone Resource Centre for the Unemployed Limited) together with the audited accounts for the appellant company for the year ending 4th February 2000. The auditors were O'Farrell & Company, Castlemaine Street, Athlone, Co. Westmeath.

The oral hearing took place at the Tribunal's Office in Dublin on 10th May 2000. Mr. Anthony Barry, Solicitor appeared on behalf of the appellant. Mr. Brendan Conway B.L. instructed by the Chief State Solicitor appeared on behalf of the respondent.

Mr. Cyril Dully gave sworn evidence on behalf of the appellant. He said he was chairman of the appellant company and a community worker for Athlone Community Service Council.

In further testimony Mr. Dully said he had participated with a group of unemployed people in setting up the Dr. Steven's Centre for the Unemployed, which is operated by the appellant company. The Centre was set up in 1992.

In operational terms the Centre was part of a community employment programme. The salaries of staff, together with some overheads, were paid by Fas. Other state agencies like the V.E.C. funded the Centre. Local funding raising and commercial sponsorship were other sources of finance.

As an example of commercial sponsorship Mr. Dully cited the appellant's computer centre. This had been sponsored by the Bank of Ireland to the extent of £50,000. This covered computer equipment and an ongoing commitment to the provision of software and maintenance.

Mr. Dully said the ethos of the Centre was to enable the unemployed and disadvantaged to avail of its services at reasonable cost and also to have access to education at reasonable cost. The centre aimed thereby to move the unemployed and the disadvantaged into mainstream education, training and employment.

In further testimony Mr. Dully described some of the activities of the centre.

It provided an information service to the public as to their entitlements. The staff giving this information are qualified to the same level as the staff of the community information services. The persons who obtain this information are comprised to the extent of 80% as coming from a disadvantaged background, e.g. – unemployed or in receipt of a disability benefit.

The centre provides computer training. On two occasions computer training was provided at the request of local organisations, one was the Athlone Trades Council and the other was a local private sector firm. In both instances the charges for the courses were higher than the charges to the Centre's normal clients. Any money earned from these two courses were retained in the centre to subsidise its normal activities.

The Centre operated a second hand book scheme. This scheme provided the children of the socially disadvantaged with school books.

The Centre provided a typing and secretarial service. This service prepared C.V.'s for job seekers.

Again the Centre operated a Jobs Club. This assisted persons to access jobs and training. Also in this respect the Centre liased with local employees as to the availability of local job opportunities.

In further testimony Mr. Dully described the role of education classes at the Centre. Many of their clients were long term unemployed. These persons suffered from low self-esteem. The Centre had personal development programmes, which encouraged the long-term unemployed to take up challenges.

As an example of the process whereby the Centre facilitated its clients in finding jobs Mr. Dully cited the Athlone Independence Initiative. This was a scheme sponsored by the European Union Horizon Programme operated by the Centre's jobs club 204 persons had participated. Out of this number 96 persons, who had been unemployed, secured either part time or full time employment.

In further testimony Mr. Dully said that since 1992, 300 to 400 people had found employment through the activities of the Centre. Other clients had gone onto various educational courses, either at second level or third level.

Mr. Dully said that the vast majority of the Centre's clients had inadequate incomes being social welfare recipients. Consequently, education classes were charged at a nominal rate. For example the European Computer Driving Licence cost £30. The commercial rate for this would be £300 to £400.

In continuing evidence Mr. Dully said the Centre is non-profit making. The Directors of the appellant company, except the Director who is an employee of Fas, do not receive any salaries. On a winding up of the company the Directors would not receive any of its assets. The Centre was currently applying to the Revenue Commissioners for charitable status.

Finally Mr. Dully said the Centre had a staff of eighteen. Their wages were provided by Fas through a community employment scheme.

Under cross-examination by Mr. Conway, Mr. Dully said that some unemployed persons after receiving training at the Centre became employees there. Again in further replies Mr. Dully said the centre always requires the students in its classes to make some financial contribution towards the tuition they receive.

Mr. Conway then cross-examined Mr. Dully about the Centre's income and expenditure as contained at page eleven of the audited accounts for the year ending 4th February 2000.

Finally under cross-examination Mr. Dully said that 70% of the persons who take courses at the Centre are unemployed.

In his sworn testimony Mr. Oakes said he had not recommended exemption from rates as he considered the subject a borderline case. He was also concerned that the memorandum and articles of association of the appellant company did not contain a winding up clause.

In his submissions Mr. Barry confirmed that he had recently been instructed to seek charitable status for the appellant.

Mr. Barry said the purpose of the Centre was to help the long term unemployed gain employment. He said the unemployed and the disadvantaged were living in poverty.

Mr. Barry referred to the objects of the appellant company as contained in its memorandum. He said the company was not a commercial entity, and also was non-profit making. In particular Mr. Barry referred to paragraph five of the memorandum which prohibited members of the company from receiving income and property of the company except by way of *bona fide* commercial transaction.

Mr. Barry said two decisions of the Tribunal supported the appellant's application for exemption, *VA97/5/027 – Northside Community Enterprises Limited* and *VA97/5/011 – Cork City Partnership Limited*.

Finally Mr. Barry said the appellant was seeking exemption pursuant to Section 63 of the Poor Relief (Ireland) Act 1838.

In his submissions Mr. Conway said no connection had been demonstrated between the work of the Centre and the relief of the poor. He said there was no necessary connection between unemployment and poverty. Mr. Conway said on the balance of probability the evidence produced by the appellant showed that it did not exclusively educate the poor.

Mr. Conway referred to the Barrington Hospital Case 1957 I.R. 299 and the Pemsell Case 1891 A.C. 531.

The former case set out the criteria for exemption from payment of rates on charitable grounds. At page 326 of the report it was stated that the charitable exemption for the education of the poor must be education "exclusively" for the poor. Again the report stated that to be exempt property must be used exclusively for charitable purposes.

Mr. Conway cited seven Tribunal judgments to support his arguments.

In *VA94/3/055 – Bantry and District Resource and Social Development Group Limited*, the appellant was a rural development body operating by way of a community employment scheme. Exemption was claimed on charitable and public purpose grounds. The Tribunal refused exemption as it found the evidence of the appellant insufficient to bring it within the narrow grounds of exemption for charitable and public purposes.

In *VA94/3/071 – Powerhouse Bolton Trust Enterprise*, the occupation of offices in the former Pigeon House Hotel was held to be rateable. The appellant was a non-profit making entity

relying on fund raising. It engaged in educational purposes and creating employment in the inner city of Dublin.

In refusing exemption the Tribunal stated that it was settled law in Ireland since McGahon and Ryan -v- Commissioner of Valuation 1934 I.R. 736 that exemption from payment of rates on the grounds of education of the poor, charitable purposes, or public purposes required that the hereditment concerned be used exclusively for these purposes.

In VA95/3/015 – *Barbara Hegarty t/a Comhlamh*, an association for returned development workers was refused exemption by the Tribunal. It was held that the organisation was more in the nature of a support organisation for the development workers than an entity which provided education.

In VA96/2/036 – *Waldorf Educational Trust* an organisation providing primary school education was refused exemption by the Tribunal. It was non-profit making and funded by voluntary contributors. It was held not to be providing education exclusively for the poor and therefore was not exempt from the payment of rates.

In VA96/2/071 – *Institute of European Affairs* an organisation dedicated to the advancement and development of research into the European Union was refused exemption from the payment of rates.

In VA96/3/057 – *Donaghmore Agricultural Museum*, the appellant was refused exemption on the grounds that it did not provide (a) education exclusively for the poor and (b) that the charitable exemption is construed narrowly in Irish Law.

In VA96/3/068 – *Beaumont Hospital Board*, the appellant operated a shop in the hospital staffed by its employees. The Tribunal found that the shop was not occupied by way of a separate letting but was occupied by the hospital in providing a facility in accordance with its statutory duties. The appellant was granted exemption from the payment of rates by the Tribunal.

Mr. Conway said this decision illustrated the operation of the *deminimis* rule.

The Tribunal has considered the written submissions, the evidence, and the legal submissions offered by the appellant and the respondent.

The Tribunal finds that the appellant does not provide education exclusively for the poor. Therefore this ground of exemption from payment of rates, which was not actively canvassed by the appellant, fails.

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

This finding is based on the un-contradicted evidence of Mr. Dully that the vast number of the appellants clients are poor and disadvantaged, being unemployed or receiving disability benefit. Furthermore Mr. Dully's un-contradicted evidence showed that the appellant's activities mostly were geared towards equipping its clients to find employment or continuing with their education. Thereby the clients of the centre are provided with the most effective means of reducing their poverty and disadvantage.

With respect to the appellant's educational projects the Tribunal notes the reference in the appellant's written submission to E.S.R.I. survey data. This data shows the relationship between educational qualifications and long-term unemployment.

Additionally this finding of the Tribunal is based on the un-contradicted evidence of Mr. Dully that the appellant is a non-commercial entity and by virtue of its Memorandum and Articles of Association no member of the appellant company can make a private profit from it.

As to the proposition determined in the *Barrington's Hospital* case that exemption from payment of rates on charitable grounds is construed narrowly in Irish Law the Tribunal notes that one of the general conclusions in the case is that the extent of the narrowness of that construction has never been decided (proposition number 2 at page 333 of the judgment).

On the other hand the Tribunal finds the facts in this case analogous to and directly comparable to the facts in the two Tribunal judgments, *Northside Community Enterprises Ltd. – VA97/5/027* and *Cork City Partnership Ltd. – VA97/5/011*. These two judgments granted the appellants exemption from the payment of rates.

Accordingly, the Tribunal determines that the subject hereditament should be distinguished as being exempt from the payment of rates in as much as it used exclusively for charitable purposes namely the relief of poverty, pursuant to Section 63 of the Poor Relief (Ireland) Act 1838.