

ORDER SHEET

IN THE HIGH COURT OF SINDH, KARACHI

Const. Petition No.D-182 of 2008

Date	Order with signature of Judge
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Petitioners M/s Holy Family Hospital through Mr. Muhammad Humayun, advocate.

None present for Respondent No.1-Government of Sindh.

Respondent No.2 The Sindh Employees Social Security Institution through Mr. Jawwad Sarwana, advocate.

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MUHAMMED KARIM KHAN AGHA, J., According to the petitioner it is a hospital and a non-profit making charitable institution, registered under the Societies Registration Act, 1860, which is completely dependent upon its earnings and charitable contributions from within Pakistan and abroad. The petitioner provides medical services to both outdoor patients and persons who are hospitalized. According to the petitioner, it has about 293 employees, all of whom, are entitled to avail its medical facilities.

2. The respondent No.1 (Government of Sindh), issued a Notification bearing No.L-II-5-9/2005 dated 15.12.2005 ("**Impugned Notification**") in terms of Section 1(3) of the Provincial Employees Social Security Ordinance, 1965 ("**Ordinance, 1965**"), notifying the petitioner as an "Establishment" at serial No.242, for the purpose of application of the Ordinance, 1965. According to the Impugned Notification the petitioner falls within the purview of Section 2(11) of Ordinance, 1965 and as such respondent No.2 corresponded with the petitioner to recover Social Security contributions in respect of its employees.

3. In essence, the petitioner has two main complaints: firstly, that it does not fall within the purview of Ordinance, 1965 as it is not an "Establishment" as defined under Section 2(11) of Ordinance, 1965. Secondly, that even if it does fall within the purview of the Ordinance, 1965, it has been unfairly discriminated against in violation of Article 25 of the Constitution of the Islamic

Republic of Pakistan, 1973 ("Constitution, 1973"). This is because not all hospitals have been included in the Impugned Notification and according to the petitioner the respondent No.1 has notified various hospitals on a pick and chose basis. The petitioner, therefore, has prayed as under:-

- i) to declare that insertion of the petitioner's name in the Notification No.L-II-5-9/2005 dated 15.12.2005 issued by respondent No.1 is patently illegal, without lawful authority and of no legal effect.
- ii) to hold that the provisions of Social Security Ordinance, 1965 are not applicable to the petitioners.
- iii) to pass further orders as being fit and proper in the circumstances of the present petition.

4. The respondents have not filed any comments/counter affidavit in respect of the petition. During arguments, learned counsel for the respondent No.2 stated that the respondent No.2 did not wish to file comments/counter affidavit to this petition, since, according to him, the matter revolved around a single point of law, which he would argue. He conceded that as no comments/counter affidavit had been filed, the factual contentions of the petitioner stood admitted.

5. Learned counsel for the petitioner emphasized that as the petitioner is a charitable institution and a hospital, as opposed to a commercial organization, it did not fall within the definition of "Establishment", as laid down under Section 2(11) of Ordinance, 1965 and as such the respondent No.1 had no lawful authority to issue the Impugned Notification including the name of the petitioner. He also contended that under Article 25 of the Constitution, 1973, the petitioner has been discriminated against because under the Impugned Notification not all hospitals have been included but only particular hospitals chosen at the whim of the respondents.

6. Learned counsel for the petitioner in support of his contentions has placed reliance on the following case law:-

- (i) DON BASCO HIGH SCHOOL v. THE ASSISTANT DIRECTOR, E.O.B.I. (PLD 1989 SC 128);

(ii) HOLY FAMILY HOSPITAL SOCIETY v. THIRD SINDH
LABOUR COURT, KARACHI (PLD 1979 Karachi 529)

7. In rebuttal, learned counsel for the respondent No.2, on the legal plane, argued that it was well settled law that a hospital falls within the ambit of Section 1(3) of Ordinance, 1965 and in particular was an "establishment" as defined under Section 2(11) of Ordinance, 1965. According to him, although there was no authority of the Hon'ble Supreme Court on this point, numerous Division Benches of this Court had already held that the Ordinance, 1965 was applicable to organizations such as hospitals and educational institutions.

8. With regard to discrimination, learned counsel contended that there had been no discrimination because the Ordinance, 1965 was progressive in nature and its ultimate aim was to bring all hospitals within its ambit. The petitioner was simply included in the first batch of the hospitals alongwith many other hospitals and that the other hospitals would be added over the course of time.

9. Learned counsel for the respondent No.2, in support of his submissions, has placed reliance on the unreported order passed by this Court on 20.2.2008 in Const. Petition No.D-619 of 2005 (M/S KARACHI ADVENTIST HOSPITAL v. GOVERNMENT OF SINDH AND ANOTHER) and on the reported cases of AL-RIAZ MEMORIAL EDUCATIONAL SOCIETY v. COMMISSIONER, SINDH EMPLOYEES SOCIAL SECURITY INSTITUTE, KARACHI (2008 PLC 293), MUSLIM EDUCATIONAL SOCIETY v. GOVERNMENT OF SINDH (2006 PLC 263), LIAQUAT NATIONAL HOSPITAL ASSOCIATION v. GOVERNMENT OF SINDH (2006 PLC 364).

10. We have reviewed the documents on the Court file, in detail, and carefully considered the arguments advanced before us by learned counsel for the petitioner and respondent No.2.

11. There are two main issues in this case. Firstly, whether the petitioner falls within the ambit of Ordinance, 1965 and, if so, secondly whether it has

been discriminated against vis-à-vis other hospitals by the respondent No.1 through the Impugned Notification.

12. Since the first issue largely revolves around the interpretation and application of Section 1(3) and Section 2(11) of Ordinance, 1965, for ease of reference the following sections are set out below:-

Section 1(3)

"1. Short title, commencement and application.- (1) This Ordinance may be called the Provincial Employees Social Security Ordinance, 1965.

(2)

(3) It shall come into force at once, but shall apply only to such areas, classes of persons, industries or establishments, from such date or dates, and with regard to the provision of such benefits as Government may, by notification, specify in this behalf."

Section 2(11)

"2(11) "establishment" means an organization whether industrial, commercial, agricultural or otherwise;

13. The question is whether the petitioner comes within the definition of an "establishment". In determining this, one of the key issues would be the interpretation of the words "whether industrial, commercial, agricultural or otherwise" (italics added), brought hospital, within the meaning of "organization".

14. Based on the "ejusdem generis" rule of interpretation of statutes, it could be argued that only other organizations similar to industrial, commercial and agricultural would be included such as other profit making organizations. This interpretation would, therefore, exclude charitable non-profit making organizations like the petitioner.

15. The maxim ejusdem generis, as defined in Black's Law Dictionary, Sixth Edition, is set out below:-

✓ "Ejusdem generis. Of the same kind, class, or nature. In the construction of laws, wills, and other instruments, the "ejusdem generis rule" is, that where general words follow an enumeration

of persons or things, by words of a particular and specific meaning, such general words are not to be construed in their widest extent, *but are to be held as applying only to persons or things of the same general kind or class as those specifically mentioned* (italics added). U.S. v. Labrecque, D.C. N.J. 419 F. Supp.430, 432. The rule, however, does not necessarily require that the general provision be limited in its scope to the identical things specifically named. *Nor does it apply when the context manifests a contrary intention* (italics added).

Under "ejusdem generis" canon of statutory construction, where general words follow the enumeration of particular classes of things, the general words will be construed as applying only to things of the same general class as those enumerated."

16. This point has been fully addressed by a Division Bench of this Court in the case of ST. BONAVENTURE'S BOYS HIGH SCHOOLS TILAK INCLINE AND QASIMABAD, HYDERABAD v. PROVINCE OF SINDH (2004 PLC 381).

17. In the case of ST. BONAVENTURE'S BOYS HIGH SCHOOLS TILAK INCLINE AND QASIMABAD, HYDERABAD the issue was whether a school, which was also a charitable organization, fell within the definition of an "establishment" under Section 2(11) of the Ordinance, 1965. In that case, as in this case, it was argued that, based on the ejusdem generis rule, a school would be excluded because it was a charitable organization and not a profit making organization, as envisaged by the words "industrial", "commercial" and "agricultural".

18. A similar argument had been advanced in the case of ADAMJEE FOUNDATION v. FIRST SIND LABOUR COURT (PLD 1979 Karachi 510), namely that an "organization" being a non-profit making organization did not fall within the ambit of Section 2(11) of Ordinance, 1965. The Court rejected this argument in the aforesaid case.

19. Quoting from the Hon'ble Supreme Court in the case of DON BASCO HIGH SCHOOL v. ASSISTANT DIRECTOR, E.O.B.I. (PLD 1989 SC 128)

✓x the Court in the case of ST. BONAVENTURE'S BOYS HIGH SCHOOLS

TILAK INCLINE AND QASIMABAD, HYDERABAD dilated upon the ejusdem generis rule in the following terms:-

"However, the doctrine will apply when there is nothing in the provision or Act to show that a wider sense was not intended or the intention to give to the general term a broader meaning than the doctrine requires, was not manifested.

According to Maxwell on the interpretation of Statutes, 12th Edition, page 297, it is well established rule in the construction of statutes that "general terms following particular ones apply only to such persons or things as are ejusdem generis with those comprehended in the language of the Legislature; R.V. Cleworth (1864) 4 B. & S. 927; per Cockburn C.J. at 932. In other words, the general expression is to be read as comprehending only things of the same kind as that designated by the preceding particular expressions, unless there is something to show that a wider sense was intended (emphasis supplied). Reference is made by the author to R.V. Edwardson ((1850) 28 L.J.M.C. 213).

According to Corpus Juris Secundum, Volume 82, page 658, the rule or doctrine of 'ejusdem generis' will apply unless intention to the contrary is clearly shown. The relevant passage may be quoted here. It reads:

"Whether general words follow the enumeration of particular classes of persons or things, the general words, under the rule or maxim of construction known as "ejusdem generis" will be construed as applicable only to persons or things of the same general nature or class as those enumerated, unless an intention to the contrary is shown." (underlining is ours).

J.G. Sutherland, in his book "Statutes and Statutory Construction" (third Edition) in section 4910, at page 400 has stated that the doctrine applies when the following five conditions exist:

- (1) the statute contains an enumeration by specific words;
- (2) the members of the enumeration constitute a class;
- (3) the class is not exhausted by the enumeration;
- (4) a general term follows the enumeration; and
- (5) there is not clearly manifested an intent that the general term be given a broader meaning than the doctrine requires."

20. The Court in the aforesaid ST. BONAVENTURE'S BOYS HIGH SCHOOLS TILAK INCLINE AND QASIMABAD, HYDERABAD case found that the ejusdem generis rule of statutory interpretation was inapplicable to Section 2(11) as not all of the (1) to (5) criteria, mentioned above, were present. As such school and other charitable organizations were captured within its meaning.

21. We also find based on the above case that the ejusdem generis rule does not apply to this case on the same grounds. Furthermore, the ejusdem generis rule would not apply in this case as a reading of the Ordinance, 1965 as a whole indicates that its intention is not to restrict the application of the Ordinance, 1965 to a few particular businesses but rather being progressive legislation, to bring as many businesses as possible within its ambit over the course of time. Thus, the Ordinance, 1965 shows a contrary intention.

22. In the ST. BONAVENTURE'S BOYS HIGH SCHOOLS TILAK INCLINE AND QASIMABAD, HYDERABAD case, particular reliance was placed on KOHINOOR CHEM CO. LTD. v. SIND EMPLOYEES SOCIAL SECURITY INSTITUTION (PLD 1977 SC 197) whereby it was held as under:-

"There is no doubt that we are dealing with a beneficial or remedial legislation conceived as a means of ameliorating the lot of the working class, and as such it would be in keeping with the accepted principle of interpretation, as observed in Divisional Superintendent, P.W.R. Karachi v. Bashir Ahmed that it should be so construed as to advance the remedy and suppress the mischief, or else it would frustrate the legislative intent. It would appear, therefore, that, in keeping with the object of the legislation, as wide an interpretation should be placed on the terms "employee" and "establishment" as permissible within the language employed in the statute."

23. Bearing in mind that the Ordinance, 1965 is legislation, the object and purpose of which, is to provide benefit to the working population, we also take the view that the term "establishment" should be given the widest interpretation. It would seem unfair to exclude a class of employees from the ambit of this beneficial legislation simply because they happened to be working for a charitable organization. To do so, would have the effect of penalizing people, who were working for the good of the community. This is not a precedent which this Court would like to set.

24. Accordingly, we find that the petitioner does fall within the definition of "establishment" and, therefore, comes within the ambit of the Ordinance, 1965.

25. We are fortified in our findings by the fact that the case of ST. BONAVENTURE'S BOYS HIGH SCHOOLS TILAK INCLINE AND QASIMABAD, HYDERABAD has been followed by at least three Division Benches of this Court. In particular, in the case of LIAQUAT NATIONAL HOSPITAL ASSOCIATION, the Court was of the view that Liaquat National Hospital Association also came within the purview of "otherwise" in Section 2(11) of Ordinance, 1965.

26. With regard to the second issue whether or not the petitioner has been discriminated against by being included in the Impugned Notification whilst some other hospitals have not, we find no merit in this argument. This is because Ordinance, 1965 is progressive legislation which aims to bring all hospitals within its ambit over the course of time. It just so happens that the petitioner is one of the earlier hospitals to fall under the umbrella of Ordinance, 1965. It should also be noted that other hospitals (although not all) have also been included in the Impugned Notification so it cannot be said that the petitioner has been solely discriminated against.

27. Reliance is placed on the case of STANDARD PRINTING PRESS v. SINDH E.S.S.I. (1988 SCMR 91), where the Hon'ble Supreme Court considered an almost identical point, based on discrimination in respect of printing press businesses. In that case the petitioner was a printing press, which had been notified under the Ordinance, 1965 and claimed that it had been discriminated against since the Notification did not include all other printing presses. The Hon'ble Supreme Court considered, in detail, the question of discrimination under Section 1(3) of the Ordinance, 1965 whilst also alluding to the significance of Section 70 of the Ordinance, 1965, in the context of discrimination and conditional progressive legislation, and held as under:-

"In any case, the enacted law (Section 1 subsection (3) is not ultra vires for its repugnance with Article 25 of the Constitution. As such the challenge to the Government's notification under section 1, subsection (3) of the Ordinance necessarily involves the examination of certain controverted facts and determination thereof it cannot take place in the absence of the Government and the parties in whose favour discrimination was alleged for they could possibly demonstrate that their cases were not similar but distinguishable."

28. In a recent unreported order of a Division Bench of this Court dated 20.02.2008, as referred to earlier, (M/S KARACHI ADVENTIST HOSPITAL v. GOVERNMENT OF SINDH AND ANOTHER), an almost identical question of discrimination was raised in respect of another hospital, which had been notified under the Ordinance, 1965. In material part it held as under:-

"It is contended by learned counsel for the petitioner that while issuing impugned notification his establishment was singled out and no other hospital was included in the scheme notified on 27.6.2003. His contention is that if other hospitals would had been included in the impugned notification he would have no grievance.

In reply to it, learned counsel for the respondent by placing reliance on certain reported judgments had argued that no discriminatory policy has been adopted by the institution and other hospitals of the city have also been covered in the Social Security Scheme, which is evident from the reported judgment LIAQUAT NATIONAL HOSPITAL ASSOCIATION through Secretary v. GOVERNMENT OF SINDH through Secretary and another (2006 PLC 364).....

In view of the above and on perusal of the record we are of the considered view that no discriminatory view has been taken against the petitioner as beside him two more medical centre are also appearing in the list of impugned Notification wherein Ordinance, 1965 has been implied....."

29. Thus, for the above reasons, we find that the petitioner has not been discriminated against in terms of the Impugned Notification under Article 25 of the Constitution, 1973.

For the foregoing reasons, the petition is hereby dismissed in limine.

Karachi,
Dated: 22.5.2009.

Annexed in Court book.
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26/5/09.

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26.5.09