

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT: MR. JUSTICE MIAN SAQIB NISAR, CJ
MR. JUSTICE UMAR ATA BANDIAL
MR. JUSTICE FAISAL ARAB

CIVIL APPEAL NO. 1352 OF 2013

(on appeal from the judgment of the Islamabad High Court, Islamabad dated 2.10.2012 passed in I.C.A. No.222/2010)

Pakistan Telecommunication Employees Trust **...Appellant(s)**

VERSUS

Federation of Pakistan, etc. **...Respondent(s)**

For the Appellant(s): Mr. Hamid Khan, Sr.ASC
M.S.Khattak, AOR

For the Respondent(s): Abdul Rasheed Awan, DAG
Raja Abdul Ghafoor, AOR

Date(s) of Hearing: 16.05.2017 & 22.05.2017

...

ORDER

MIAN SAQIB NISAR, CJ.— The facts of this appeal are that the appellant, Pakistan Telecommunication Employees Trust (*the Trust*), manages the Pakistan Telecommunication Corporation Employees Pension Fund (*the Pension Fund*), certain amounts of which were invested in various banks and schemes etc. The Zakat and Ushr Department deducted zakat in terms of Section 3 the Zakat and Ushr Ordinance, 1980 (*the Ordinance*). The appellant challenged such deductions through a constitution petition before the learned High Court on the ground that the appellant was not a *sahib-e-nisab* and thus, could not be made subject to compulsory deduction of zakat. The writ petition was dismissed. The appellant's Intra-Court Appeal was also dismissed by the learned Division Bench of the High Court *vide* impugned judgment, hence this appeal with the leave of the Court dated 5.11.2013, to consider, *inter alia*, the following questions:-

- (a) Whether the appellant, being a trust, does not fall within the definition of *sahib-e-nisab* provided in Section 2(xxiii) of the Ordinance being a successor to the Pension Fund under Sections 45 and 46 of the Act?
- (b) Whether the deduction of zakat in the instant case does not fall within the ambit of Section 3 of the Ordinance, which is the charging section read with Schedule-I appended therewith?
- (c) Whether the Pension Fund, on which zakat is to be deducted, does not fall within the meaning of annuities as defined in the Ordinance?
- (d) Whether zakat is not payable under Section 3 of the Ordinance by the appellant as it does not own or possess any assets rather held the same as *amanat*, on which no zakat is leviable?
- (e) Whether zakat is not payable by the appellant as the funds being administered by it are not its assets but its liability towards the beneficiaries of the Trust in terms of Sections 44 to 46 of the Act?
- (f) The Pension Fund being a joint account for the beneficiaries/pensioners, who themselves might be liable to deduction of zakat, whether the deduction of zakat prior to the onward payment of money to them would amount to double taxation?

2. Heard. For the sake of brevity, the arguments of the learned counsel for the parties are not recorded separately and shall be reflected in the course of the opinion. The learned counsel for the respondents raised a preliminary objection regarding the maintainability of the writ petition before the learned High Court, that the appellant was established in 1996 and zakat was continuously deducted since 1997, whereas the writ petition was filed in 2004, therefore, the same is hit by

laches. We find that the principle of *laches* does not apply in this case because zakat was deducted from the appellant each year which gave rise to a fresh cause of action to challenge the validity of such deduction. Thus, we hold that the writ petition was maintainable.

3. The fundamental question in this appeal is: what is the legal status of the appellant and whether it falls within the scope of Section 3 of the Ordinance for the purposes of deduction of zakat? In order to answer this question, we find it expedient to discuss the law pertaining to zakat. Section 1(2) of the Ordinance provides for the extent of the application of the Ordinance: (i) territorial jurisdiction, in that it extends to the whole of Pakistan; (ii) subject matter jurisdiction, in that it pertains to payment and recovery of zakat; and (iii) parties' jurisdiction, in that the Ordinance applies only to Muslim citizens of Pakistan and a company, or other association of persons, or **body of individuals, whether incorporated or not**, majority of the shares of which is owned, or **the beneficial ownership of which is held, by such citizens**. Section 3(1) of the Ordinance is important which reads as follows:-

3. Charge and collection of Zakat.– (1) *Subject to the other provisions of this Ordinance, Zakat in respect of assets mentioned in the First Schedule shall be charged and collected, on compulsory basis, for each Zakat year, at the rates and in the manner specified therein, and as may be prescribed, from every person who is on the Valuation Date, and for the whole of the preceding Zakat year been, sahib-e-nisab, and who owns or possesses such assets on the Valuation Date:*

The aforementioned section is the charging provision according to which zakat is to be compulsorily charged and collected for each zakat year in respect of the assets mentioned in the First Schedule from every person

who: (i) is, on the Valuation Date, and for the whole of the preceding zakat year been, **sahib-e-nisab**, and (ii) **owns or possesses** such assets on the Valuation Date. *Sahib-e-nisab* has been defined in Section 2(xxiii) as under:-

2(xxiii) ‘sahib-e-nisab’ means a person who owns or possesses assets not less than *nisab*, but does not include:

- (a)
- (b) **a statutory corporation**, a company or other enterprise, **owned wholly, directly or indirectly, by the Federal Government**, a Provincial Government, a local authority or a corporation owned by the Federal Government or a Provincial Government, either singly or jointly with one or more of the other three;

□

- (i) an institution, fund, **trust**, endowment or society:-
 - (a) **registered as a charitable organization under the Societies Registration Act, 1860** (XXI of 1860), **or as a company under section 26 of the Companies Act, 1913** (VII of 1913), **or registered or approved as a charitable or social welfare organisation under any other law for the time being in force, and**
 - (b) **approved by the Central Board of Revenue for the purposes of section 47 of the Income Tax Ordinance, 1979** (XXXI of 1979);

[Emphasis supplied]

According to the above definition, *sahib-e-nisab* is a person who owns or possesses assets not less than *nisab* which has been defined in Section 2(xva) of the Ordinance as follows:-

2(xva) ‘nisab’ in relation to assets liable to Zakat, except agricultural produce and animals fed free in pastures, means 612.32 grams of silver, or cash or gold, or goods for trade,

or any assets liable to Zakat under Shariah, the aggregate value of which is equal to the value of 612.32 grams of silver, as notified by the Administrator-General for each Zakat year or, in the case of a person whose assets liable to Zakat consist only of gold, 87.48 grams of gold;

4. It is not disputed that the Pension Fund was less than the *nisab* prescribed in Section 2(xva) *ibid*. The main contention of the learned counsel for the appellant is that the Ordinance does not apply to the appellant as it is not a *sahib-e-nisab* in terms of Section 2(xxiii)(b) of the Ordinance, as it is a statutory corporation wholly owned by the Federal Government. In this regard, he relied upon the judgment reported as **Administration General Zakat, Central Zakat administration, Islamabad and others Vs. Pakistan Insurance Corporation through Secretary and others** (PLD 2016 SC 468). He also argued that the Ordinance did not apply to the appellant as according to Section 1(2) thereof, it applied only to Muslim citizens which he contended the appellant is not. On the other hand, learned counsel for the respondents submitted that the appellant is not owned by the Federal Government, thus is a *sahib-e-nisab* and is not exempt from the deduction of zakat. Thus, we must examine the nature and status of the appellant, for which the relevant provisions of the Pakistan Telecommunication (Re-organisation) Act, 1996 (*the Act*). Section 2(w) of the Act defines 'Trust' which "*means the Pakistan Telecommunication Employees Trust established under section 44;*" Section 44(1) of the Act provides that "*As soon as may be, after the commencement of this Act, the Federal Government shall, by notification in the official Gazette, establish a trust to be called the Pakistan Telecommunication Employees Trust.*" According to sub-section (2) thereof, the Trust shall be a body corporate, having perpetual succession and a common seal with power (*subject to the provisions of the Act*) to acquire and hold

property, both moveable and immovable, and shall sue and be sued by its name. Sub-section (3) stipulates that the Trust is to be managed by a Board of Trustees (*the Board*) consisting of six trustees, three to be appointed by the Federal Government and three by Pakistan Telecommunication Company Limited (*the Company*), for a period of three years, unless earlier removed by the appointing authority. Section 45(1) of the Act provides:-

45. Pension Fund.- (1) *The Federal Government shall, by notification in the official Gazette, order that from the effective date, all assets of the Pakistan Telecommunication Corporation Employees Pension Fund as created by a Trust Deed dated the 2nd April 1994, hereinafter referred to as the "Pension Fund", and such liabilities as are specified in the notification, shall vest in and shall become the assets and liabilities of the Trust:*

Provided that.....

Sub-section (3) thereof lists the amounts and contributions that the Fund is to consist of:-

- (3) *The Pension Fund shall consist of-*
- (a) *amounts received from the Pakistan Telecommunication Corporation Employees Pension Fund referred to in sub-section (1);*
 - (b) *contribution to be paid by the Company under sub-section (2);*
 - (c) *annual contribution to be paid by the Company at the commencement of each financial year;*
 - (d) *investments and the profits, gains and other returns accrued on such investments; and*
 - (e) *donations and other contributions by individuals or any aid-giving agencies.*

Section 46 of the Act goes onto stipulate the functions and powers of the Trust which read as under:-

46. Functions and powers of the Trust.- (1) *For carrying out the purposes of the Trust, the Board of Trustees shall-*

- (a) *take over and assume the liability of the Pension Fund, including contributions of the Company to the Pension Fund;*
- (b) *obtain payment from the Company of the amount determined by Actuary as representing the unfunded proportion of the accrued pension liabilities to be discharged by the Company;*
- (c) *determine, at the commencement of each financial year, the amount to be contributed to the Pension Fund by the Company; and*
- (d) *make provision for the payment of pension to telecommunication employees to the extent of their entitlement.*

(2) *In performance of its functions, the Board of Trustees shall-*

- (a) *have the exclusive right to determine the amounts, if any, payable in respect of pension benefits to the telecommunication employees;*
- (b) *administer and operate the Pension Fund;*
- (c) *specify and certify the requirements to be fulfilled for payments of the pensions to be made from the Pension Fund;*
- (d) *appoint, promote, remove and exercise discipline and control over its employees; (e) enter into contracts;*
- (f) *acquire, lease, encumber, dispose of, exchange, invest or otherwise deal with any moveable or immovable property or any interest therein; and*
- (g) *exercise all such powers as may be necessary or incidental to the performance of any of its functions or the exercise of any of its powers.*

(3) The Manager of the Board of Trustees shall be responsible for administrative control of the employees of the Trust and day to day working of the Trust as may be assigned to him by the Board of Trustees.

A cumulative reading of above provisions makes clear that the appellant is an independent and autonomous body which is not wholly owned, directly or indirectly, by the Federal Government. Mere creation by a notification issued by the Federal Government under Section 44 of the Act does not, to our mind, mean that the Trust is wholly owned by the Federal Government. It can acquire and hold property, both moveable and immoveable, and can sue and be sued in its own name. The Trust is managed by the Board which is free to take decisions by simple majority, and just because half of the members of the Board are appointed by the Federal Government, one cannot conclude that the Trust is owned by the Federal Government. For all its actions, it is neither required to obtain prior permission nor is bound to get the same validated from the Federal Government, apart from the framing of rules for the management and conduct of business of the Trust in accordance with Section 44(9) of the Act. We find that this single factor is not sufficient to establish whole ownership of the Federal Government. Furthermore, as is clear from Section 45(1) of the Act, a Pension Fund was created, albeit by the Federal Government through a notification in the official Gazette, and all the assets of Pakistan Telecommunication Corporation (PTC) Employees Pension Fund created by a trust deed dated 2.4.1994, and such liabilities as were specified in the notification, **vested in and became the assets and liabilities of the appellant**. As is manifest from Section 45(2) of the Act, the Federal Government makes no contributions whatsoever to the Pension Fund. A bare reading of Section 46 of the Act makes clear that the Board is free and independent to exercise its powers and carry

out its functions in accordance with law with no interference whatsoever from the Federal Government. Moreover, Section 53(2) of the Act lends support to the proposition that the Pension Fund is owned by the Trust and not the Federal Government, as “*The balance of the Pension Fund shall, on the winding up of the Trust, be paid to the Federal Government...*” suggesting that till winding up of the Trust, the Pension Fund is not owned by the Federal Government but the Trust itself. Hence it is safe to say that the appellant is not owned, directly or indirectly, by the Federal Government and is therefore not excluded from the definition of *sahib-e-nisab* under Section 2(xxiii)(b) of the Ordinance. Additionally, the appellant is no doubt a body of individuals, albeit not incorporated, the beneficial ownership of which is held, by Muslim citizens, as it is not the case of the appellant that the majority of the employees/pensioners are non-Muslims; thus, the Ordinance is applicable to the appellant in terms of territorial, subject matter and parties’ jurisdiction contained in Section 1(2) thereof.

As regards the National Insurance Corporation’s case (*supra*) relied upon by the learned counsel for the appellant, suffice it to say that in the said judgment this Court declared the Corporation to be exempt from the deduction of zakat as it was wholly owned by the Federal Government. The said case is distinguishable from the instant case and cannot be relied upon, as we have held above, the appellant is not wholly owned, directly or indirectly, by the Federal Government.

5. Learned counsel for the appellant also argued that the Ordinance does not apply to the appellant as it is not a *sahib-e-nisab* in terms of Section 2(xxiii)(i) of the Ordinance being a charitable trust meant for the social welfare of the employees of the Company. In this regard, it is to be noted that as reproduced above, an institution, fund, trust, endowment or society is exempt from deduction of zakat in terms

of Section 2(xxiii)(i) *ibid* only if it meets two criteria: (a) it is registered as a charitable organization under the Societies Registration Act, 1860, or as a company under Section 26 of the Companies Act, 1913, or registered or approved as a charitable or social welfare organization under any other law for the time being in force; **and** (b) it is approved by the Central Board of Revenue for the purposes of Section 47 of the Income Tax Ordinance, 1979. When the learned counsel for the appellant was confronted with this provision, he candidly conceded that the appellant is not registered as a charitable or social welfare organization under any relevant law. Yet, he argued that the trust has been created for a public purpose, namely to pay pension to the government employees of the Pakistan Telephone and Telegraph Department (*the Department*) which later became the employees of the Company, therefore, it should be exempted from the deduction of zakat. We do not find that the appellant is involved in any social welfare or charitable activity, rather it only provides pension to the retiring employees of the erstwhile Department. In this regard, this Court has held in various judgments that pension is not bounty, but is a right acquired in consideration of past service. The right to pension is a well-earned right subject to fulfillment of the conditions provided in the law. Learned counsel also submitted that the provision *ibid* should be construed in a wide manner to encompass all types of trusts, including the appellant, and not be restricted to those who fulfill part (a) and (b) of Section 2(xxiii)(i) *supra*. We are of the view that the law is clear, in that the appellant, albeit a trust (*note:- certain provisions of the Trusts Act, 1882 are applicable to the appellant according to Section 52 of the Ordinance*), must fulfill the conditions contained in part (a) **and** (b) of Section 2(xxiii)(i) *ibid* which admittedly the appellant does not. We are not willing to read in 'any type of trust' into Section 2(xxiii)(i) *ibid* as that would render part (a) and (b) thereof to be entirely

redundant, and redundancy cannot be attributed to the legislature. Therefore, the appellant is not a trust that falls within the provisions of Section 2(xxiii)(i) of the Ordinance and is thus not excluded from the definition of *sahib-e-nisab*.

6. Learned counsel for the appellant also argued that the Pension Fund is not an asset of the appellant, rather it (*the appellant*) is only a conduit and merely holds the Pension Fund on trust for the employees/pensioners of the Company as *amanat*, thus the appellant is exempt from payment of zakat. According to the learned counsel, vesting in management cannot be equated with vesting in ownership. In this behalf, he relied on the case of Board of Foreign Missions of the Presbyterian Church in the United States of America through Lahore Church Counsel Vs. the Government of the Punjab through Secretary Education, Civil Secretariat, Lahore and another (1987 SCMR 1197). As mentioned above, under Section 45 of the Act, all assets of the PTC Employees Pension Fund and such liabilities as were specified in the notification, stood **vested in** the appellant and **became its assets and liabilities**. Under Section 46 of the Act, the Board is to take over and assume the liability of the Pension Fund, including contributions of the Company to the Pension Fund [*clause (a)*]. Furthermore, the Board is authorized to, *inter alia*, administer and operate the Pension Fund [*Section 46(2)(b)*] and acquire, lease, encumber, dispose of, exchange, invest or otherwise deal with any moveable or immoveable property or any interest therein [*Section 46(2)(f)*]. Thus, the appellant clearly holds and possesses the assets, i.e. the Pension Fund. It is pertinent to mention here that in the definition of *sahib-e-nisab* under Section 2(xxiii) of the Ordinance, the phrase used is “*a person who owns or possesses assets*”. Likewise, the requirement of Section 3 *ibid* is also that “*who owns or possesses such assets on the Valuation Date*”. The word ‘or’

signifies that to 'own' and 'possess' are separate and disjunctive. To qualify as a *sahib-e-nisab* and to fall within the ambit of the charging section (*Section 3 of the Ordinance*), a person may not necessarily be the owner of an asset rather need only possess the same. Therefore though in the above discussion we have found that for all intents and purposes it is the Trust that owns or has the legal title to the assets, even if it is accepted that the real ownership is the beneficial ownership which vests in the employees/pensioners who are the beneficiaries of the Pension Fund, the Trust being in **possession** of such Fund would still qualify as a *sahib-e-nisab* under Section 2(xxiii) of the Ordinance and would fall within the ambit of Section 3 thereof and be liable to payment of zakat.

As regards the case of **Board of Foreign Missions of the Presbyterian Church in the United States of America** relied upon by the learned counsel for the appellant, though it was observed by this Court that the word 'vest' is a word of variable import, not having a fixed connotation and does not necessarily mean to 'vest in title', yet the facts of the said case are entirely distinguishable from the instant case. The issue involved therein was that whether after taking over of the management of the privately managed schools by the Federal Government, the property owned by them vested in the Government or not. The Court finally held that the intention of Martial Law Regulation No.118 manifestly was only to take over the management of the institutions and not to confiscate the property in which the privately managed schools were being run. Thus, the ratio of the said case is not attracted to the instant case.

7. We now advert to the argument of the learned counsel for the appellant that zakat is payable on assets and not liabilities, and that the Pension Fund is entirely a liability. Accepting this contention would mean that all banks and financial institutions, etc. which hold non-

charitable funds and endowments, etc. would also be exempt from zakat for the mere reason that such funds and endowments, etc. are liabilities held for the depositor, account holder or beneficiary. This would be ludicrous. Therefore, we do not find any force in this argument which is hereby repelled. In fact, the balance sheet of the appellant reflects that upon investment of the amounts in the Pension Fund, the appellant has earned a certain amount of income. This negates the argument that the Pension Fund is a liability.

8. Finally, the learned counsel for the appellant submitted that deducting zakat from the appellant would amount to double taxation as zakat would subsequently be deducted from the person who eventually receives the pension (*if he is a sahib-e-nisab*). To our mind, this prospect is misconceived. Zakat under the Ordinance is collected only once a year. If in one year, zakat was deducted from the appellant, and subsequently an employee/pensioner was determined to be entitled to pension and was made such payment from the Pension Fund, for the next year when such pensioner holds and possesses his pension amount, if he fulfills the conditions of Section 3 of the Ordinance and is a *sahib-e-nisab*, it is only he who would be liable to pay zakat upon the amount held by him, and not the appellant which has ceased to hold and possess such amount. Therefore, there is no possibility of double taxation and this argument too, is rejected.

9. As we have found above that the appellant is a *sahib-e-nisab* and the Pension Fund is an asset owned and possessed by the appellant, therefore, it (*the appellant*) is liable to compulsory payment of zakat under Section 3 of the Ordinance, thus the question as to whether the Pension Fund does not fall within the meaning of annuities as defined in the Ordinance does not need any deliberation. During the course of arguments, the learned counsel for the appellant gave up the argument

regarding the Pension Fund being a joint account for the beneficiaries/pensioners.

10. In the light of the above, we do not find any reason to interfere in the impugned judgment. Resultantly, this appeal is dismissed.

CHIEF JUSTICE

JUDGE

JUDGE

Announced in open Court

on **4.8.2017** at **Islamabad**

Approved for reporting

Mudassar/★