

1968

Present : Tennekoon, J.

Mrs. C. V. ABEYRATNE, Appellant, and
Mrs. S. MARAMBE KUMARIHAMY and 4 others, Respondents

*S. C. 1/67—Appeal to the Supreme Court in terms of section 29 (2) of the
Employees' Provident Fund Act in Case No. EPF/TA/2/67*

*Employees' Provident Fund—Contributions made to it by a member—Entitlement to
benefits thereon on death of the member—Rights of nominee as against legatee—
Employees' Provident Fund Act, No. 15 of 1958, ss. 3 (1), 3 (2), 10, 23, 24,
25, 27, 29, 16 (1) (g).*

W, who was a member who contributed to the Employees' Provident Fund, nominated the 1st respondent as the person entitled to be paid all amounts standing to his credit in the Fund in the event of his death. Nevertheless, before he died on 23rd July 1966, he left a Will bequeathing those amounts to the appellant and the 1st, 3rd and 4th respondents. The 2nd respondent, in his capacity as executor of the Will, claimed the whole amount standing to the credit of W. The 1st respondent also claimed that sum as the person nominated in terms of the Employees' Provident Fund Act. The appellant conceded that, in view of section 3 (2) of the Act, it could not be said that the nomination of the 1st respondent was revoked or superseded by the Will. He contended, however, that the 2nd respondent, as executor of the Will, was entitled under sub-paragraph (a) of section 24 of the Act to payment of the benefit.

Held, that, having regard to the fact that there was a valid and effective nomination of a person who remained alive at the time of the death of W, section 24 had no application; and no right for the executor to receive the money in question could be founded on that section. The 1st respondent, being nominee, was entitled to receive the benefit.

APPEAL in terms of section 29 (2) of the Employees' Provident Fund Act.

M. T. M. Sivardeen, for Appellant.

Ananda de Silva, Crown Counsel. for Attorney-General.

Cus. adv. vult.

June 20, 1968. TENNEKOON, J.—

One F. L. S. S. Weerakoon who was employed as an Engineer in the Ceylon Mineral Sands Corporation was a member and made contributions to the Employees' Provident Fund in terms of the provisions of the Employees' Provident Fund Act No. 15 of 1958 (hereinafter referred to as the Act). He had nominated the 1st respondent Mrs. S. M. Kumarihamy as the person entitled to be paid all amounts lying to his credit in the Fund in the event of his death. Mr. Weerakoon was above 55 years of age and still employed under the Mineral Sands Corporation when he died on 23rd of July 1966. At the date of his death there was a sum of about six thousand rupees lying to his credit in the fund. Mr. Weerakoon had left a Last Will in which he is said to have bequeathed his property (including the amount lying to his credit in the Fund) to the appellant and the 1st, 3rd and 4th respondents. The 2nd respondent in his capacity as Executor of the said Last Will claimed the amount lying to the credit of Weerakoon from the Commissioner of Labour. The 1st respondent also claimed the said sum of money as the person nominated by Weerakoon to receive the amounts lying to his credit in the event of his death.

The Commissioner acting under section 28 of the Act made a determination that the 1st respondent was entitled to the entirety of the benefit, the amount of which appears to have been calculated to be Rs. 5,800/60. An appeal was taken to the Tribunal of Appeal under section 29 of the Act, and the Tribunal by its order of 27/6/67 affirmed the Commissioner's decision holding that the 1st respondent was the person entitled to the benefit. The present proceedings are an appeal under section 29 (2) of the Act to this Court from the decision of the Tribunal of Appeal.

The 1st ground of appeal, viz.: that the nomination of the 1st respondent was revoked or superseded by the Will was quite rightly abandoned at the hearing before me by Counsel appearing for the appellant in view of the provisions of section 3 (2) of the Act which provides that :—

“ Neither a member of the Fund nor any person claiming under him shall have any interest in, or claim to, the moneys of the Fund *otherwise than by virtue of any provision of this Act or of any regulation.*”

The second ground of appeal and the one that was pressed by Counsel for the appellant was that the 2nd respondent as Executor of the Last Will of the deceased member was entitled to payment of the benefit under sub-paragraph (a) of section 24 of the Act.

Crown Counsel appearing for the Commissioner of Labour was equally emphatic that section 24 of the Act, the very section on which the appellant relied, clearly negated appellant's contention.

Section 24 reads as follows :—

“ Where a member of the Fund dies before becoming entitled to the amount standing to his credit in his individual account or where he dies after becoming entitled thereto but before receiving such amount or where no nominee has been appointed under regulations made under the Act to whom such amount should be paid in the event of the death of such member or where one nominee has been appointed and he is dead or where more than one nominee is appointed and any one of them is dead, then such amount shall—

- (a) if it is not less than two thousand five hundred rupees, be paid to the executor of the last will or the administrator of the estate of such deceased member to be included in that estate ; and
- (b) if it is less than two thousand five hundred rupees, be paid to the person who is, or be apportioned by the Monetary Board among the persons who are certified by the Commissioner to be in his opinion, entitled by law to such amount.”

Before examining this section it is necessary to be informed of the meaning of certain words and expressions used therein. A ‘ member of the Fund ’ is an employee who has become liable under section 10 to pay contributions to the Fund ; he continues to be a member so long as there is any sum to the credit of his individual account in the Fund (see section 3 (1) of the Act).

The expression “ before becoming entitled to the amount standing to his credit in his individual account ” has reference to section 23 under which provision is made for all the situations in which the amount in the fund standing to the credit of a member will be paid out to *him*.

The word ‘ nominee ’ is not defined in the Act ; but its meaning is made clear in the section empowering the Minister to make regulations in respect of nominations. Section 46 (1) reads as follows :—

“ The Minister may make regulations --

- (g) in respect of the nomination by a member of the Fund, of a person or persons to whom the amount standing to the credit of that member's individual account in the Fund may be paid in the event of that member's death and the manner of revocation of such nomination ; ”

It is clear that the word "nominee" in section 24 refers to a person nominated (in accordance with rules made by the Minister) by a member of the Fund and that such nominee would be the person entitled to be paid the amount standing to the credit of that member in the event of that member's death. To say of a nominee that he is not entitled to be paid the benefit upon the death of the member who nominated him is to deny to the term "nominee" the very meaning which is attributed to it in the Act. Section 25 makes it quite clear that there are three categories of persons who become entitled to a benefit under the Act, viz. :

- (1) those referred to in section 23 ;
- (2) those referred to in section 24 ; and
- (3) a nominee appointed by a member as the person entitled to be paid the benefit upon his death.

Section 23 deals with the circumstances in which the benefit is paid to the member himself, he being alive ; upon death of a member, if there is a nominee or nominees, such nominee or nominees become entitled to the payment. The only area in which provision is further needed is where the member dies without having made a nomination at all or where at the death of a member a nomination has become defective by reason of the supervening event of death of a sole nominee or of the death of any one of several nominees. One would have expected section 24 (the only provision relating to entitlement to benefits other than section 23 and those relating to nominees) to deal with this aspect. But it *ex facie* deals with situations already covered by other provisions of the Act and in a manner which drains the word 'nominee' of the meaning attributed to it in other parts of the Act. For convenience of analysis this section can be split up into five parts :—

- (1) where a member of the Fund dies before becoming entitled to the amount standing to his credit in his individual account ; or
- (2) where a member dies after becoming entitled thereto but before receiving such amount ; or
- (3) where no nominee has been appointed under regulations made under this Act to show such amount should be paid in the event of the death of such member ; or
- (4) where one nominee has been appointed and he is dead ; or
- (5) where more than one nominee is appointed and any one of them is dead, then such amount shall, etc.

Now, looking at the plain meaning of words, the only condition postulated to bring limb 1 or 2 into operation is the death of the member—and this, irrespective of the existence of a valid and operative nomination. If this is the result intended by the legislature it is inconceivable why

limbs (3), (4) and (5) were at all incorporated. It would have been sufficient, without the waste of so much legislative breath in repetition and tautology, to enact that "where any member of the Fund dies" then payment shall be made in accordance with sub-paragraphs (a) and (b) of the section. Further, limbs (3), (4) and (5) are pregnant with meaning; they imply very clearly that the section has no application where there is a valid and operative nomination at the time of the death of the member. Are then limbs (1) and (2) to be confined to cases where there is no valid and operative nomination? It is not possible to reach this result because that is the very kind of case dealt with in limbs (3), (4) and (5). It is also obvious that although there is no express postulation of 'the death of a member' for limbs (3), (4) or (5) to operate, the death of a member as contemplated in limb (1) or as contemplated in limb (2) is condition precedent for limbs (3) or (4) or (5) to operate. There is thus a defect in the section as it stands. The absurd results to which it can lead are revealed when one tries to apply the section to the facts of the present case. As contended by Counsel for the appellant, the application of the 1st limb can only result in the executor being declared entitled to receive payment. As contended by Counsel for the 5th respondent, the clear and necessary implication of the 3rd and 4th limbs of the section is that the deceased member having made a nomination (of the 1st respondent) and that nominee being alive, the section has no application. Thus the application of section 24 as it stands yields the absurd answer that both the executor, representing the estate of the deceased member, and the nominee are each entitled to be paid the whole sum standing to the credit of the deceased member, and they should both be successful in these proceedings—a situation very reminiscent of the Caucus-Race in Alice in Wonderland, where everybody wins and there is no loser. That being the case, rather than say that the section is beyond interpretation, I would make use of the principle that a court, in interpreting a statutory provision, is permitted, occasionally, in order to avoid manifest absurdity, and *ut res magis quam percat*, to read 'and' for 'or'. (See Maxwell, Interpretation of Statutes 11th Edn page 229). It seems to me that if the word 'or' that appears after the 2nd limb is read as 'and' one gets a perfectly sensible provision that accords with the scheme of the Act and avoids the internal inconsistencies and absurdities in the section as it stands at present. In my opinion, the section should be read as follows:—

Where a member of the Fund dies before becoming entitled to the amount standing to his credit in his individual account; or

where a member dies after becoming entitled thereto but before receiving such amount; and

where no nominee has been appointed under regulations made under this Act to whom such amount should be paid in the event of the death of such member; or

where one nominee has been appointed and he is dead; or

where more than one nominee is appointed and any one of them is dead ;

then such amount shall, etc.

The section, it seems to me, was intended to apply only in cases where a member dies *and* there is no valid or effective nomination. 'Nomination' is the only method provided by the Act by which a member of the Fund can control the destination of the amount standing to his credit in the event of his death. As observed earlier a member cannot make a testamentary disposition of such moneys. The content of sub-paragraphs (a) and (b) of section 24 are clearly directed towards a situation of 'intestacy' in regard to the amount in the Fund ; and intestacy in this context can only refer to the absence of a valid or fully effective nomination.

Applying the section in this way I hold that, having regard to the fact that in the present case there was a valid and effective nomination of a person who remained alive at the time of the death of Weerakoon, section 24 has no application ; and no right for the executor to receive the money in question can be founded on that section. The 1st respondent being nominee is entitled to receive the benefit.

In the result the appeal fails and is dismissed. There will be no order for costs.

Appeal dismissed.
