

O'Higgins C.J.
Walsh J.
Henchy J.
Griffin J.
Hederman J.

THE SUPREME COURT

No. 145 of 1981



GOVERNORS OF WESLEY COLLEGE AND
THE TRUSTEES OF THE METHODIST
CHURCH IN IRELAND

v.

THE COMMISSIONER OF VALUATION

Judgment of Henchy J.
delivered the 9th December 1982

Nan die

The question of rateability in this case essentially depends on whether Wesley College is an institution altogether of a public nature and used exclusively for public purposes.

It is of course an educational institution in that it provides education of a general character for the pupils it accepts. However, I consider that because one of the conditions for the admittance of most of the pupils is the payment of a sizable fee, it cannot be said that Wesley College is altogether of a public nature or altogether used for public purposes.

Under the Constitution of Wesley College the

(2)

Governors are required "to provide and afford for Methodist and other children and for so many of the children of Ministers in connexion with the Methodist Church as may from time to time be elected or designated for such purpose by the Conference (of the Methodist Church in Ireland) subject to such charges or scale of charges as may from time to time be determined by the Governors for the time being".

The operation of this remit has had the result that in 1973 (the last year for which we have statistics), of the 622 boys and girls attending the College 19.3% were Methodists, 59.3% were members of the Church of Ireland and the remaining 12.54% were drawn from other Protestant sects, from Roman Catholics and from Jews and Muslims. Thus, while the College is of unique benefit to the small, scattered Methodist community in this State, it enures overwhelmingly for the benefit of non-Methodists. It is essentially a private fee-paying school, with a leaning in favour of Methodists, receiving from the Department of

(3)

Education the grants and subventions available to recognized secondary schools, but geared to the making of a profit, within its terms of reference, from the fees which are paid by the parents or guardians of the vast majority of the pupils. In 1974 the fee per pupil was £150 and the gross profit per pupil was £96.41.

In those circumstances I do not think the College can be said to have the exclusively public nature or purpose necessary for exemption. This conclusion seems to be borne out by the judicial authorities: see, for example, Trustees of Magee College v. Commissioner of Valuation I.R. 4 C.L. 438 and Guardians of Waterford Union v. Barton 1896 2 I.R. 538. In fact, for rating purposes I find it impossible to distinguish the College from the many other fee-paying secondary schools in the State which are subject to rates.

Counsel for the Governors of Wesley College and the Trustees of the Methodist Church in Ireland sought support for his case in Pembroke U.D.C. v. Commissioner

of Valuation 1904 2 I.R. 427. That decision, however, does not help his argument. The school there in question, Pembroke Technical School, was maintained by public money, it derived no private profit, it was open to all comers, and the fee of 2s.6d which each student had to pay was disregarded by the court under the de minimis rule because it was intended to ensure that only bona fide and serious students would enroll. The circumstances of Wesley College are radically different.

Likewise there is a basic distinction to be drawn between the present case and University College, Cork v. Commissioner of Valuation 1911 2 I.R. 593. In that case the University College was held exempt from rates. The basis of the exemption appears from the headnote:

"University College, Cork, one of the constituent Colleges of the National University of Ireland, provided the highest class of education and instruction, and was open to all His Majesty's subjects; fees were charged to all students; these fees, however, were not payable to the

(5)

professors, but were brought into the general funds of the College; the College was bound to present annual accounts of all receipts and expenditure to the Controller and Auditor General, and these accounts, together with the report of the Controller and Auditor General, had to be laid before Parliament. — Held, that on these facts the hereditaments and buildings of the College were exempt under the Irish Rating and Valuation Code, on the ground that such hereditaments and buildings were (per Madden and Wright, JJ.) altogether of a public nature and used for public purposes; (per Kenny J.) "exclusively charitable" in their objects, purposes and user".

In that case the relevant provisions of the Irish Universities Act, 1908, and of the charter of the National University and of that of the College marked the College as having, in terms of its objects, user and financial accountability, characteristics which made it altogether of a public nature and used for public or exclusively charitable purposes. Here such or similar characteristics are wanting. As in the

Magee College case, Wesley College is occupied and used, at least partly, for beneficial or private purposes, as distinct from public or charitable purposes. It is, therefore, rateable.

While counsel for Wesley College at one stage of the argument tentatively suggested that, in accordance with the opinion of the House of Lords in Governors of Campbell College, Belfast v. Commissioner of Valuation for Northern Ireland (1964) 1 W.L.R. 912 that exemption is to be sought in s. 2 of the Valuation (Ireland) Act, 1854, he ultimately withdrew that suggestion and rested his case for exemption exclusively on the proviso to s. 63 of the Poor Relief (Ireland) Act, 1838. It is on the latter footing, therefore, that this case falls to be decided.

I would answer the questions in the case stated by holding that the tenements and hereditaments of Wesley College are not used exclusively for charitable purposes and are not of a public nature and dedicated to or used exclusively for

(7)

public purposes, and accordingly should not be
thus distinguished in the valuation lists.

Approved
84

10-12-82

