

IN THE MATTER of Narendra Prasad  
s/o Bhagwan Prasad

AND IN THE MATTER of Fiji National  
Provident Fund monies deposited  
in Court.

INTERIM DECISION

The Court has a duty imposed on it by section 35 of the Fiji National Provident Fund Act to dispose of the funds standing to the credit of a member of the Fund where such member has died without nominating to whom the money in the Fund should be paid on his death.

The Act provides little guidance for the Court. Section 35 provides as follows:-

"35(1) If, at the time of the death of any member of the Fund, there is no person nominated under the provisions of section 34, the amount standing to the member's credit in the Fund shall be paid into Court for disposal in accordance with the law for the time being in force.

(2) If any person nominated, other than a widow, shall be under the age of eighteen years at the time of payment of the amount payable out of the Fund, his portion of the amount payable shall be paid to the Public Trustee for the benefit of such nominated person. "

For some years I have been of the view that the Act might require amendment but my views have not gained official approval.

The Court has adopted a stream-lined procedure which is far from perfect but provides a procedure which is inexpensive and expedites payment of moneys to those

considered eligible.

The Court does not consider applications in vacuo. There must be an application before it and an order made from which a dissatisfied claimant can appeal.

Having consulted the F.N.P.F. Board and the Public Trustee a procedure was adopted for dealing with funds of deceased members who did not in their lifetime nominate the person or persons to receive such funds.

The funds are paid to the Court and the F.N.P.F. Board furnishes a notice containing as much relevant information as the Board has. The money is on receipt ordered to be paid to the Public Trustee to invest pending further orders.

The Public Trustee investigates and submits an affidavit sworn by the person he considers is entitled to the fund supported by copies of documents such as birth, death or marriage certificates.

This affidavit is treated by the Court as an application by or on behalf of the claimants to the fund mentioned in the affidavit and the Court determines who is entitled to the fund and orders accordingly.

This procedure is at the best a workable inexpensive speedy way of dealing with the funds but it is far from perfect.

Most of the applications do not involve large sums but all applications involve as time goes by larger and larger sums as inflation raises wages and salaries.

To ensure that the right person entitled received the funds there would have to be provision for advertising for claims a formal application to the Court and provisions for finality of orders made. Alternatively there could be

directions given in the Act stating who is entitled at law to the fund or how such person can be determined where there has been no nomination.

The difficulty which the Court faces is deciding what the legislature means by the words "disposal in accordance with the law for the time being in force" in subsection (1) of section 35 of the Act.

The difficulty arises out of subsection (2) of section 43 of the Act. This section is designed to protect sums contributed to and withdrawn from the fund.

The subsection provides as follows:-

"(2) Notwithstanding the provisions of any other written law, all moneys paid out of the Fund on the death of any member of the Fund shall be deemed to be impressed with a trust in favour of the person nominated under the provisions of section 34 by the deceased member or if no such person has been nominated the person or persons determined by the Court in accordance with the provisions of subsection (1) of section 35 to be entitled thereto and shall be deemed not to form part of the deceased member's estate nor to be subject to his debts. "

By virtue of that subsection on the death of a member the money is deemed to be impressed with a trust in favour of the person nominated or the person whom the Court determines is entitled to it in the absence of any nomination. The fund is deemed also not to form part of the deceased member's estate.

No problems arise where there has been a nomination but who is entitled to the fund by law if there is no nomination if the fund is deemed by law not to be part of the deceased member's estate?

One answer to that query in interpreting the subsection might be to hold that the section is designed

to protect the fund from creditors and exempts it from estate and succession duties but that it remains nevertheless in fact, and in law the property of the deceased's estate for any other purpose.

If that is the correct legal position then the person or persons entitled to the fund might be determined by the provisions of the deceased's will or the law of intestacy.

Such an interpretation makes sense in my view but the question will have to be argued and a ruling made by the Court. Since I have heard no argument in respect of the present application I refrain from making any ruling.

The instant application is a good example of the problems the Court faces. The amount involved is \$8534.94. The said Narendra Prasad died testate.

In his will he left \$10,000 in full and final satisfaction of all maintenance for his wife and daughter. The deceased's wife now claims the sum of \$8534.94 is payable to her and her daughter.

The will discloses that the testator's wife "separated from him on 7th June 1979". He left the rest of his estate to one Harbhajan Kaur who in the will is stated to have looked after the testator during his "grave illness" and had given him "service and society". She is the residuary beneficiary and if the will has application she would be entitled to the fund.

Particulars provided by the Board indicate the deceased revoked his nomination presumably when he and his wife separated but he made no further nomination. There was no legal obstacle to his nominating Harbhajan Kaur.

The person or persons entitled to the fund could be the applicant and her daughter if the will is to be ignored or the residuary beneficiary under the will.

It cannot have been intended by the legislature that the funds for all purposes are deemed not to belong to the deceased's estate because the outcome would be that the Court would have to hold no one but the Crown is entitled to the funds since there is no living person who could in that case claim the moneys.

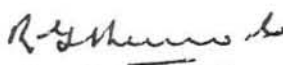
I propose to consider this application after an opportunity has been given to Harbhajan Kaur to submit her claim if she wishes to do so.

I direct that a copy of this ruling be furnished to the applicant and also to the said Harbhajan Kaur through Mr. G.P. Shankar the executor named in the will. The latter should also be furnished with a copy of the affidavit and annexed papers which will be treated as an application. A copy of the will should also be furnished to both parties.

The said Harbhajan Kaur if she wishes to make a claim must do so in writing within 1 month of the date to be fixed by the Registrar. A copy of such claim must also be delivered to the present applicant.

The Registrar will then fix a date for hearing the application which will be dealt with as if it were an originating summons.

There are legal issues in this application and ideally the parties should be represented by counsel. This is a test case the outcome of which, should it be considered by the Fiji Court of Appeal, will simplify claims by future claimants.

  
(R.G. Kermode)  
JUDGE

SUVA,

4 October, 1982.