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CARL ZEISS STIFTUNG, TRADING AS CARL ZEISS, OF HEIDENHEIM,
 FEDERAL REPUBLIC OF GERMANY *v.* CARL ZEISS STIFTUNG, JENA,
 EAST GERMANY

Pakistan, High Court. 29 September 1967

(Qadeeruddin Ahmad, J.)

SUMMARY: *The facts:*—The appellant and respondent both claimed to be the charitable corporation, Carl Zeiss Foundation, established in 1899 in Jena. At the end of the Second World War, after Jena was occupied by the Soviet Union, the directors of the foundation took up residence in Heidenheim in Wuerttemberg, which was part of the United States Zone. The Heidenheim Foundation continued to carry on business under the name of Carl Zeiss, in what became the Federal Republic of Germany. The business of the foundation was also continued in Jena after 1945 by a different group of people, and goods were manufactured there under the Carl Zeiss name. In 1948 the Jena business was nationalized by the Soviet occupation administration. The Heidenheim board then obtained from the Government of Wuerttemberg a decree transferring the Foundation's domicile to Heidenheim. This decree was subsequently confirmed by general legislation passed by the Parliament of the Federal Republic of Germany. Both corporations initiated a series of legal actions to secure the trademark in both parts of Germany and in several foreign countries.¹ In 1961 the Karachi

¹ See 22 *I.L.R.* 16, 24 *I.L.R.* 42, 43 *I.L.R.* 23 and 61 *I.L.R.* 35.

Registrar of Trademarks accepted the application of the respondent for registration in Pakistan of the trademark 'Zeiss'. The West German organization appealed against this decision. It argued, *inter alia*, that the decree of the Wuerttemberg Government was an act of State which could not be scrutinized by municipal courts in other States. The respondent alleged that the Government of the Federal Republic of Germany had no authority to transfer the domicile of the foundation.

Held:—The appeal was dismissed. The fact that the decree had purportedly been issued under the municipal law of the Federal Republic of Germany was itself sufficient to exclude it from the category of acts of State. Even if it was accepted as an act of State, it could have no effect on the organization of the company in the Soviet Zone, because the Federal Republic of Germany had no authority in that territory. The decree was not confiscatory. Therefore, if the West German business was merely a part of the property of the East German organization, the owners had to remain immune from its effects.

The following is the text of the judgment of the Court:

[278] The two appeals mentioned above will be disposed by this judgment. They have arisen from an order of the Registrar of Trade Marks, Karachi, dated the 18th of September 1961, by which he accepted the application of an East German organization for registration in Pakistan of the Trade mark "Zeiss", and rejected a similar application of a West German organization. Both organizations claim to be the charitable corporation which a gentleman, by the name of Ernst Abbe, had founded in Jena, which place, after the partition of Germany in 1945, now falls in the Eastern Zone occupied by Russia. In order to explain the nature of the respective claims of the two organisations it is necessary that their history and constitutions be briefly set out.

2. Carl Zeiss started an optical works around 1846 and later, with two partners, also a glass works. Ultimately Abbe became their sole owner and founded a charitable corporation (or stiftung) in or about 1891, and transferred to it the ownership of the two businesses. Each of these businesses was to be managed by a Board of Management, but profits were to be transferred to a third Board, called the "Special Board" (Verwaltung) for the purpose of achieving the objects of the charitable corporation. The Special Board was to be represented on the Boards of Management of the two businesses by an official called "Komissar" or Deputy. The constitution of the charitable corporation was and is known as "statute".

3. It will facilitate understanding of the disputes if some of the relevant features of the statute are explained here before continuing with the history of the charitable corporation. Such features are the

provisions as to the objects and domicile of the corporation, importance of the Special Board and its Deputy, pensions to the employees, and the manner in which certain [279] apprehended difficulties and obstructions were to be removed. The provisions as to the objects and domicile are as follows:—

“ARTICLE 1

OBJECTS OF THE STIFTUNG

The objects of the Carl Zeiss Stiftung are:

A. Within the Works

1. To cultivate the branches of precise technical industry, which have been introduced into Jena by the Optical Works and the Glass Works with the co-operation of the founder of the Stiftung and thereby maintain the said industrial establishments under an impersonal title of proprietorship; that is to say:

2. Permanent solicitude for the economic security of the above undertakings as well as for the conservation and further development of their industrial labour organization—as a source of subsistence for a large number of people and as an efficient member in the service of scientific and practical interests;

3. To fulfil higher social duties, than personal proprietors would permanently guarantee, towards the totality of co-workers in its employ, in order to better their personal and economic rights.

B. Outside the Works

1. To promote the general interests of the branches of precise technical industry as indicated above not only within the sphere of action proper of the Stiftung's Works but also outside of it;

2. To take part in organizations and measures designed for the public good of the working population of Jena and its immediate neighbourhood;

3. To promote study in natural and mathematical sciences both as regards research and teaching.

The objects of the Stiftung as enumerated under A are to be carried out by the Stiftung by virtue of the statutory administration of its own industrial undertakings exclusively and within the scope of these undertakings.

Respecting carrying out the objects of this Stiftung as enumerated sub B, these shall be limited to such surplus funds as may be available after the provisions as detailed sub A have been provided for.

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ARTICLE 3

DOMICILE

The legal domicile of the Stiftung shall be Jena.

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ARTICLE 39

REMOVING THE STIFTUNG FROM JENA

The Works of the Stiftung alluded to in Article 6 shall not be transferred to localities outside the immediate neighbourhood of Jena.

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ARTICLE 121

The provisions of the four Articles, 1 to 4, and the four preceding ones above (Articles 117 to 120) can, under no circumstances and in no manner, be legally amended or rendered inoperative. In the above provisions the importance of Jena, its neighbourhood and population should be noted. In addition, the specific prohibition against change of domicile is worthy of note. The words “impersonal title of proprietorship” in Article 1 (1), the words “conservation and further development of their industrial labour organization” in Article 1 (2), as well as the words “higher social duties than personal proprietors would permanently guarantee” in Article 1 (A) (3) are significant.”

4. Further, the importance of Jena and of the Special Board can be noticed in the following provisions:—

“ARTICLE 5

SPECIAL BOARD AND DEPUTY OF THE STIFTUNG

The rights and duties of the Special Board shall pertain to that Department of the State service of the Grand Duchy of Saxe-Weimar under which the affairs of the University of Jena are, for the time being, placed.

The office of permanent Deputy to be appointed by the Special Board shall be held in an extra-official capacity by a higher official of the State service of the Grand Duchy of Saxe-Weimar or, failing such, an active higher official of the public service; and he shall receive as remuneration a sum from the funds of the Stiftung fixed from time to time, but no bonuses or similar honoraria.

It is incumbent on the Special Board and on the Deputy to conduct the affairs of the Carl Zeiss Stiftung with due regard to the intentions of the founder thereof both in accordance with the provisions laid down in this Statute and also in the spirit they suggest.

In doing so they are bound to heed interests of State, which are alien to the implied objects of the Stiftung, no more than is legally demanded from private individuals.”

“ARTICLE 25

NOMINATION OF MEMBERS OF THE BOARDS OF MANAGEMENT

The members of the Boards of Management of the businesses of the Stiftung are to be nominated by the Special Board after consultation with the Deputy of the Stiftung and the members of the Board of Management already actively employed in [281] the said business. No one can be nominated contrary to the unanimous consent of these members.

The nomination creates no special office, but only the right to take part in the functions laid down in Article 8 *et seq.* of this Statute.”

5. Some of the provisions which emphasize the inferiority of the Boards of Management to the Deputy are that:

“ARTICLE 10

INFLUENCE OF THE SPECIAL BOARD ON THE BUSINESS DIRECTORATE

Any influence of the Special Board on the Board of Management of the businesses of the Stiftung may only take place in so far as is prescribed by this Statute; and only then through the intermediation of the Deputy of the Stiftung.

ARTICLE 11

It is the duty of the Deputy of the Stiftung to continually supervise the Management of the business in all its branches, to superintend the regularity of the administration, and to see that the procedure of the Board of Management is in conformity with this Statute, as well as to co-operate in all important acts of the Management according to the procedure laid down in Articles 13 to 20 either by way of decision or by way of advice.

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ARTICLE 14

WHERE THE DEPUTY IS TO BE CONSULTED

All matters and occurrences which lie outside the ordinary run of business, must, when there is no immediate danger, be submitted before decision to the Deputy of the Stiftung and dealt with before him.

ARTICLE 16

TRANSACTIONS REQUIRING CONSENT OF THE DEPUTY

The Boards of Management have to obtain the explicit consent of the Deputy of the Stiftung even in the event of their being unanimous in opinion with regard to the following transactions:

Sale or encumbrance of real property, mortgaging of movable effects of the Firms and contracting liabilities of any nature whatsoever, which do not arise in the ordinary course of business or in execution of a statutory decision of the Boards of Management and are settled accordingly.

Expenditure of capital for new business undertakings (including new plant, extension of Works and the like) which exceeds within the financial year the half of the portion accruing to the respective Firms in the 'Renewal and Works Extension Account' in the Reserve Funds of the Stiftung. Further, expenditure on 'Expenses Account' within a financial year for the said purposes for more than one tenth of the [282] portion of the Firms' share in the 'General Reserve Account' in these Reserve Funds, both irrespective of whether actual withdrawals from the Reserve Funds take place or not. The said amounts are to be apportioned according to the state of the Reserve Funds at the beginning of the respective financial year as laid down by the provisions in Articles 23 and 45 of this Statute.

Expenditure of capital for new business undertakings, which, capital and expenditure taken together, amount to more than two thirds of the profits of the Firm in the financial year preceding, if already in the course of the last two preceding financial years more than the portions specified in the above section has been actually withdrawn from the Reserve Funds for similar objects. The profit is to be determined according to the provision in section 23; the withdrawals which have been made from the Reserve Funds are to be determined by the state of the latter at the beginning of the current financial year.

Establishment of own shops, branches or trading depots of the Firm outside the German Empire.

Investing persons other than members of the Board of Management with power of attorney.

Determining the salaries of members of the Board of Management and granting them other advantages.

Dismissal and pensioning of those scientific, technical and mercantile officials of the Firms, to whom the Management of departments or principal branches of the administration and of the Works has been entrusted, as well as all officials with life contracts.

Alterations in the Pension Statute and the Sick Fund Statute.

Taking part in civil actions or arbitrations in disputes which do not result from the ordinary course of business.

Honorary donations and other unusual disbursements, which are extraordinary according to their kind or amount, while not directly serving to business purposes, and which are to be debited to the 'Disposal Account' of the Board of Management in conformity with Article 22—with the proviso that regular payments of this description, which have been debited to the Disposal Account of a Board of Management during the life of the founder, shall be continued in this account so long as the original cause is in existence.

Granting continuous support to former employees or their families, which amounts to more than the lawful obligations of the Firms and is unnecessary to prevent such persons from falling into unmerited distress or to cause the poor rates of the parish to increase through the Works.

Expenditure on charitable organizations and similar measures within the business which are not already demanded on the count of business interests."

[283] 6. Pension to the retired employees is an important head of expenditure. Several Articles deal with this subject. Article 72 runs as follows:—

“ARTICLE 72
CLAIM TO PENSION

Officials, clerks and workmen, who have entered into the service of the businesses of the Stiftung before the completion of their fortieth year are after five years' service entitled to a pension, which can be upheld at law against their Firm, not only in their own person, in case of becoming incapacitated during their engagement from following their occupation by age or permanent illness or other circumstances not attributable to grave misdemeanours on their own part, but also, in case of death, in favour of their widow and children.

For the settlement of these claims with regard to all those engaged in the business, who are not under special contract, the 'General Pension Statute' of the Firms Carl Zeiss and Schott and Gen. dated 1st September 1897 in its main provisions holds good, namely:

The period of service qualifying for a pension to begin at the completion of the 18th year;

Maximum amounts of the monthly wages or salaries qualifying for a pension after 5, 10 and 15 years of service