

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 391 OF 1998
WITH
CIVIL APPLICATION NO. 11151 OF 2014

Balasaheb Dempurikar Vidhya Mandir,
Umari, Tq. And Dist.Parbhani,
Through its Head Master,
Balaji Eknath Kamble,
Age-38 years, Occu-Service,
R/o Umari, Tq. And Dist.Parbhani – PETITIONER

VERSUS

1. The State of Maharashtra,
2. Assistant Provident Fund Commissioner,
Sub – Regional Provident Fund Officer,
Aurangabad,
3. The Parbhani District Co.op.Bank Ltd.,
Jawaharlal Nehru Road,
Parbhani,
Through its agent – RESPONDENTS

WITH
WRIT PETITION NO.3277 of 1997
WITH
CIVIL APPLICATION NO.11124 OF 2014

Dnyanopasak Arts and Commerce College,
at Jintur,
Through its Acting Principal
Prakash Laxman More,
an Educational Institution,
run by Dnyanopasak Shikshan Mandal
at Parbhani, an institution registered
under the Societies Registration Act and
Bombay Public Trusts Act,
running educational institutions

in the District of Parbhani

– PETITIONER

VERSUS

1. Sub Regional Provident Fund Commissioner,
having office at Aurangabad,
2. The Commissioner of Provident Fund
for State of Maharashtra,
having office at Bombay,
3. Union of India,
Through Ministry of Labour,
Central Secretariat,
New Delhi,
4. The Special Recovery Officer,
attached to Sub-Regional
Provident Fund commissioner's Office,
at Aurangabad,
5. Swami Ramanand Teerth Marathwada
University,
through its Registrar,
Dnyan Teerth,
Vishnupuri, Nanded

– RESPONDENTS

WITH
WRIT PETITION NO.379 OF 1998
WITH
CIVIL APPLICATION NO.11179 OF 2014

Narshinh Vidhya Mandir,
Pokharni, Tq. And Dist.Parbhani,
Through its Head Master,
Sy.Kaja Sy.Nijam,
Age-39 years, Occu-Service,
R/o Pokharni, Tq. And Dist.Parbhani

– PETITIONER

VERSUS

1. The State of Maharashtra,
2. Assistant Provident Fund Commissioner,
Sub – Regional Provident Fund Officer,

Aurangabad,

3. The Parbhani District Co.op.Bank Ltd.,
Jawaharlal Nehru Road,
Parbhani,
Through its agent – RESPONDENTS

WITH
WRIT PETITION NO.380 OF 1998
WITH
CIVIL APPLICATION NO.2270 OF 2017

Pandit Jawaharlal Nehru
Vidhya Mandir, Shingnapur,
Tq. and Dist.Parbhani,
through its Head Master
Khating Rangnath Laxmanrao,
Age-36 years,
R/o Singnapur, Tq. Dist.Parbhani – PETITIONER

VERSUS

1. The State of Maharashtra,
2. Assistant Provident Fund Commissioner,
Sub – Regional Provident Fund Officer,
Aurangabad,
3. The Parbhani District Co.op.Bank Ltd.,
Jawaharlal Nehru Road,
Parbhani,
Through its agent – RESPONDENTS

WITH
WRIT PETITION NO.381 OF 1998
WITH
CIVIL APPLICATION NO.2268 OF 2017

Rajarshi Shahu Maharaj Vidhya Mandir,
Arvi, through,
its Head Master,
Shri Laxman Sakharamji Thorat,
Age-35 years,
Arvi, Tq. And Dist. Parbhani – PETITIONER

VERSUS

1. The State of Maharashtra,
 2. Assistant Provident Fund Commissioner,
Sub – Regional Provident Fund Officer,
Aurangabad,
 3. The Parbhani District Co.op.Bank Ltd.,
Jawaharlal Nehru Road,
Parbhani,
Through its agent
- RESPONDENTS

WITH
WRIT PETITION NO.388 OF 1998
WITH
CIVIL APPLICATION NO.404 OF 2013

Punyashlok Ahilayabai Holkar Vidhya Mandir,
Pimpalgaon, Tq. And Dist. Parbhani,
Through its Head Master,
Shri Kishan Kondiba Khandare,
Age-40 years, Occu-Service,
R/o Laxman Nagar, Pimpalgaon,
Tq. and Dist. Parbhani

– PETITIONER

VERSUS

1. The State of Maharashtra,
 2. Assistant Provident Fund Commissioner,
Sub – Regional Provident Fund Officer,
Aurangabad,
 3. The Parbhani District Co.op.Bank Ltd.,
Jawaharlal Nehru Road,
Parbhani,
Through its agent
- RESPONDENTS

WITH
WRIT PETITION NO.389 OF 1998
WITH
CIVIL APPLICATION NO.2267 OF 2017

Dnyaneshwer Vidhya Mandir
Purna (J) Dist.Parbhani,
Through its Head Master,
Shri Gadale Shamrao Gangaram,
Age-31 years, Occu-Service,
R/o Purna, Dist.Parbhani.

– PETITIONER

VERSUS

1. The State of Maharashtra,
2. Assistant Provident Fund Commissioner,
Sub – Regional Provident Fund Officer,
Aurangabad,
3. The Parbhani District Co.op.Bank Ltd.,
Jawaharlal Nehru Road,
Parbhani,
Through its agent

– RESPONDENTS

WITH
WRIT PETITION NO.390 OF 1998
WITH
CIVIL APPLICATION NO.2265 OF 2017

Late Munjaji Vithalrao Shinde Vidhya Mandir,
Khanapur, Tq. And Dist.Parbhani,
Through its Head Master,
Sheshrao Tukaram Garud,
Age-39 years, Occu-Service,
R/o Khanapur Area,
Tq. and Dist.Parbhani

– PETITIONER

VERSUS

1. The State of Maharashtra,
2. Assistant Provident Fund Commissioner,
Sub – Regional Provident Fund Officer,
Aurangabad,
3. The Parbhani District Co.op.Bank Ltd.,
Jawaharlal Nehru Road,

Parbhani,
Through its agent

– RESPONDENTS

WITH
WRIT PETITION NO.401 OF 1998
WITH
CIVIL APPLICATION NO.2271 OF 2017

Lalbahadur Shastri Vidhya Mandir,
Takali, Tq. And Dist. Parbhani,
Through its Head Master,
Shri Ramesh Rajaramji Bhagwat,
Age-32 years, Occu-Service,
R/o Takli, Tq. And Dist.Parbhani

– PETITIONER

VERSUS

1. The State of Maharashtra,
2. Assistant Provident Fund Commissioner,
Sub – Regional Provident Fund Officer,
Aurangabad,
3. The Parbhani District Co.op.Bank Ltd.,
Jawaharlal Nehru Road,
Parbhani,
Through its agent

– RESPONDENTS

WITH
WRIT PETITION NO.402 OF 1998
WITH
CIVIL APPLICATION NO.2272 OF 2017

Yeshvantrao Chavan Vidhya Mandir,
Takali (B), Tq. And Dist.Parbhani,
Through its Head Master,
Shri Uttam Abaji Bharose,
Age034, Occu-Service,
R/o Takali (B), Tq. And Dist.Parbhani,

– PETITIONER

VERSUS

1. The State of Maharashtra,

2. Assistant Provident Fund Commissioner,
Sub – Regional Provident Fund Officer,
Aurangabad,

3. The Parbhani District Co.op.Bank Ltd.,
Jawaharlal Nehru Road,
Parbhani,
Through its agent

– RESPONDENTS

WITH
WRIT PETITION NO.845 OF 1998
WITH
CIVIL APPLICATION NO.1199 OF 2013

1. Little Flower School,
Parali-Vaijanath,
District Beed,
Through its Principal,
Shri Abdul Baseer Muniruddin
Siddiqui, Age-43 years,
Occu-Service,
R/o Parali-Vaijanath,
Taluka Parali – Vaijanath,
District : Beed,

2. Modern Education Society,
Parali-Vaijanath,
Taluka Parali-Vaijanath,
District Beed,
Through its Secretary,
Bhanudas Madhavrao Deshmukh,
Age-55 years, Occu-Agriculture,
R/o Parali Vaijanath,
Tal.Parali Vaijanath,
Dist. Beed

– PETITIONERS

VERSUS

1. The Union of India,

2. The Regional Provident Fund
Commissioner, Bombay and Goa
Region, Bandra, Mumbai – 400 051

3. The Assistant Provident Fund
Commissioner and Recovery Officer,
Sub-Regional Office, Aurangabad,

4. The State of Maharashtra,
Through the Secretary,
Education Department, Mantralaya,
Mumbai – 32.

– RESPONDENTS

Mr.C.R.Deshpande and Mr.V.G.Sakolkar, Advocate for the petitioners.
Mr.N.T.Bhagat, AGP for respondent No.1.
Mr.K.B.Choudhary, Advocate for respondent No.2.
Mr.Bushan Kulkarni, Standing Counsel for respondent No.1 in
WP No.845/1998.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 17/02/2017

ORAL JUDGMENT :

1. All these writ petitions have been taken up together in view of the order passed by this Court on 27/01/1998, keeping in view that a common point of law has been raised by all these petitioners in the light of Section 16(1)(c) of the E.P.F. and M.P.Act, 1952. For the sake of clarity, the order dated 27/01/1998 reads as under :-

“ Leave to amend.

In all these petitions a common point of law has been urged by the learned counsel for the petitioners in as much as in view of the provisions of Section 16(1)(c) of the Employees Provident Funds and Miscellaneous Provisions Act, 1952. The said act is not applicable to the employees of private schools as they are entitled for pension etc. Under the M.E.P.S.Act, 1977

and the Rules thereunder.

Notice before admission returnable on 29/01/1998.

Hamdast granted.

Mr.Chillarge, learned A.G.P. waives service for respondent No.1.

The Deputy Director of Education Aurangabad, is directed to depute an Officer from his office to remain present before this Court on 29.1.1998 to clarify if the above contentions raised by the learned counsel for the petitioners are supported by the State Government or otherwise.

Mr.R.G.Deo, learned counsel waives service for respondent No.2.

Mr.Deshpande, undertakes to serve copies on Mr.Deo, learned counsel today itself.”

2. After hearing all the sides and while admitting these petitions by order dated 29/01/1998, this Court arrived at a prima-facie conclusion that all such schools which were covered u/s 16 of the E.P.F. Act. By the combined reading of Rules 19 and 20 of the MEPS Rules, 1981 with paragraph No.16 of clause 3.2 of the Secondary School Code, such schools were exempted from the applicability of the E.P.F. and M.P. Act. The order dated 29/01/1998 reads as under :-

“ Heard Shri C.R.Deshpande, counsel for petitioner, Shri R.C.Deo, Standing Counsel for respondent No.2 in Writ Petition

Nos.379/98, 380/98, 381/98, 389/98 and 390/98 and Shri Alok Sharma, Additional Standing Counsel for respondent No.2 in Writ Petition Nos.390/98, 401/98 and 402/98 and Shri.S.V.Chillarge, Assistant Government Pleader for respondent No.1.

On a combined reading of Rules 19 and 20 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 and paragraph 16 of Clause 3.2 of the Secondary School Code, it is prima-facie evident that the provisions of the Provident Funds and Miscellaneous Provisions Act, 1952 are not applicable to the employees working in recognised private schools whether aided or unaided.

Rule made returnable on 24th February 1998.

In the meanwhile, ad-interim stay in terms of prayer clauses (D) and (E).

Leave to amend. Amendment to be carried out within one week from today.

Respondent No.1 to file affidavit within two weeks from today.”

3. When these matters were heard by this Court on 17/06/1998, it was noted that the issue as to whether the school is an aided school or not would be a decisive factor.

4. For the sake of clarity, it would be apposite to reproduce Section 16 of the E.P.F. Act as under :-

“(1) This Act shall not apply -

(a) to any establishment registered under the Co-operative Societies Act, 1912 (2 of 1912), or under any other law for the time being in force in any State relating to co-operative societies, employing less than fifty persons and working without the aid of power ; or

(b) to any other establishment belonging to or under the control of the Central Government or a State Government and whose employees are entitled to the benefit of contributory provident fund or old age pension in accordance with any Scheme or rule framed by the Central Government or the State Government governing such benefits ; or

(c) to any other establishment set up under any Central, Provincial or State Act and whose employees are entitled to the benefits of contributory provident fund or old age pension in accordance with any scheme or rule framed under that Act governing such benefits ;

(d) [x x x]

(2) If the Central Government is of opinion that having regard to the financial position of any class of [establishment] or other circumstances of the case, it is necessary or expedient so to do, it may, by notification in the Official Gazette, and subject to such conditions as may be specified in the notification, exempt [whether prospectively or retrospectively], that class of [establishments] from the operation of this Act for such period as may be specified in the notification.]

Note : Section 16-A was inserted by Act No.33 of 1988, but the same has not been brought into force.”

5. Section 16-A though was inserted by Act No.33 of 1998 w.e.f. 01/09/1991, the same has not been brought into force, in as much as it does not fall for the consideration of this Court in these matters. Section 16-A reads as under :-

“16-A Authorising certain employers to maintain provident fund accounts

(1) The Central Government may, on an application made to it in this behalf by the employer and the majority of employees in relation to an establishment employing one hundred or more persons, authorise the employer, by an order in writing, to maintain a provident fund account in relation to the establishment, subject to such terms and conditions as may be specified in the Scheme :

Provided that no authorisation shall be made under this sub-section if the employer of such establishment had committed any default in the payment of provident fund contribution or had committed any other offence under this Act during the three years immediately preceding the date of such authorisation.

(2) Where an establishment is authorised to maintain a provident fund account under sub-section (1), the employer in relation to such establishment shall maintain such account, submit such return, deposit the contribution in such manner, provide for such facilities for inspection, pay such administrative charges, and abide by such other terms and conditions, as may be specified in the Scheme.

(3) Any authorisation made under this section may be cancelled by the Central Government by order in writing if

the employer fails to comply with any of the terms and conditions of the authorisation or where he commits any offence under any provision of this Act :

Provided that before cancelling the authorisation, the Central Government shall give the employer a reasonable opportunity of being heard.”

6. The Hon'ble Apex Court in the matter of M/s D.A.V. College and Others Vs. Regional Provident Fund Commissioner and others, [1988 (Suppl) SCC 518] dealt with a somewhat similar situation, except that the State Rules pertaining to any School Code or Education Act was not cited before the Hon'ble Apex Court. In its order (2 paragraphs), the Hon'ble Apex Court has held as under :-

“1. Shri S.K. Bagga, learned Counsel appears for the petitioners. We do not find any substance in the contention of the petitioners in these cases that the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as 'the Act') has no application to the educational institutions who are petitioners in these cases. We, therefore, dismiss all these cases.

2. We direct that the petitioners shall comply with the Act and the schemes framed there under regularly with effect from 1.2.1988. Whatever arrears they have to pay under the Act and the schemes in respect of the period between 1.3.1982 and 1.2.1988 shall be paid by each of the petitioners within such time as may be granted by the Regional Provident Fund Commissioner. If the petitioners pay all the arrears payable from

1st March, 1982 upto 1st February, 1988 in accordance with the directions of the Regional Provident Fund Commissioner he shall not levy any damages for the delay in payment of the arrears. Having regard to the special facts of these cases the subscribers (the employees) shall not be entitled to any interest on the arrears. The Writ Petitions are disposed of accordingly. No costs."

7. As such, I find it appropriate to rely upon the law laid down by the Hon'ble Apex Court in Regional Provident Fund Commissioner Vs. Sanatan Dharam Girls Secondary School and others, [AIR 2007 SC 276]. The Apex Court dealt with the issue as regards whether the non-governmental institutions, commonly termed as private educational institutions, would be covered by the E.P.F. Act or whether any provision of the School Act introduced by a particular State would entitle such schools to be exempted in view of Section 16 of the E.P.F. Act.

8. Keeping in view the law laid down by the Hon'ble Apex Court in the D.A.V. College case (supra), there can be no dispute that Educational Institutions would be covered by the E.P.F. Act, 1952. Considering the law laid down in the Sanatan Dharam Case (supra), the distinction would be that those schools, which are exempted u/s 16 of the E.P.F. Act, would not be covered by the E.P.F. Act and would

be governed by the Rules introduced by the State Government. Consequentially, those private schools, which do not fall under the Rules introduced by the State Government under the Private Schools Act and are not exempted by Section 16 of the E.P.F. Act, would thus continue to be covered under the E.P.F. Act.

9. The Hon'ble Apex Court in the Sanatan Dharam case (supra) has dealt with the aspect of the non-government educational institutions (Private institutions in short) being governed by enactments introduced by the State Governments for the first time. The Rajasthan Non Government Educational Institutions Act, 1989 was before the Hon'ble Apex Court while considering the effect of the E.P.F. Act. In the instant case, the State of Maharashtra introduced the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (hereinafter referred to as the 1977 Act) and this was followed by the introduction of the MEPS Rules, 1981, akin to the Rajasthan Act of 1989.

10. There is no dispute in all these cases that the petitioners are such educational institutions which are not owned by the Central Government or the State Government. Many of these institutions termed as private schools or colleges, are receiving salary grants and

non salary grants being extended to such schools.

11. The above fact situation is practically identical to the facts that were before the Hon'ble Apex Court in the Sanatan Dharam Girls School case (supra).

12. In order to refer to the facts before the Hon'ble Apex court in the Sanatan Dharam Case (supra), it would be apposite to reproduce paragraph Nos. 2 to 13 of the said judgment hereunder :-

"2. Brief facts in the matter are as follows:

The Employees' Provident Fund and Misc. Provisions Act (in short 'the EPF Act') came into force in 1952. In 1982, vide Gazette notification by the Government, Educational Institutions were added in the Schedule of the Act under section 1 (3). The schedule reads thus:

"(i) any University;

(ii) any college whether or not affiliated to a University

(iii) any school, whether or not recognized or Aided by the Central or State Government

(iv) any scientific institution

(v) any institution in which research in respect of any matter is carried on.

(vi) any other institution in which the activity of imparting knowledge or training is systematically carried on."

3-4. Further in 1988, clause (b) of [section 16\(1\)](#) of the EPF Act, 1952 was substituted by new clauses (b) (c) and (d). The amended provisions read as under:

" 16 (1) (b): to any other establishment belonging to or under the control of the Central Government or a State Government and whose employees are entitled to the benefits of contributory provident fund or old age person in accordance with any scheme or rule framed by the Central Government or the State Government governing such benefits;

(c) to any other establishment set up under any Central Provincial or [State Act](#) and whose employees are entitled to the benefits of contributory provident fund or old age person in accordance with any scheme or rule framed under that Act governing such benefits;

(d) to any other establishment newly set up until the expiry of a period of three years from the date on which such establishment is has been set up"

5. The State Government had framed rules known as 'The Rules for payment of Grant-in-Aid to non-governmental educational, cultural and physical educational institutions in Rajasthan, 1963'.

6. Later in 1989 the Rajasthan Legislative Assembly passed "The Rajasthan Non-Government Educational Institutions Act, 1989" which came into force from 01.01.1993.

7. On 05.08.1997, the State Government (Finance Department) issued an order to implement the provisions of the [EPF Act, 1952](#)

on Non-Governmental aided educational institutions employing 20 or more persons.

8. On 24.01.1998, the State Government (Educational Department) passed an order by which it transferred the existing Provident Fund amount from the State treasury to the office of Regional Provident Fund Commissioner.

9. Later on 24.08.1998, the State Government (Finance Department) passed an order about transfer of Provident Fund amount from State treasury to the Provident Fund Commissioner.

10. Various Educational Institutions filed 21 writ petitions in the High Court of Rajasthan, challenging the orders and circulars of the State Government issued on 05.08.1997, 24.01.1998 and 24.08.1998. The Regional Provident Fund Commissioner also filed 2 writ petitions in the High Court.

11. The learned Single Judge dismissed the writ petitions filed by the Regional Provident Fund Commissioner and allowed the 21 writ petitions filed by different Educational Institutions by an order dated 16.01.2001 stating that the state Act would override the provisions of [EPF Act](#), 1952 and also observed that the educational institutions before him would fall under the exception under the amended [section 16 \(1\) \(b\)](#) of the [EPF Act](#).

12. Against this order of the learned Single Judge, the RPFCC went on appeal before the Division Bench of the Rajasthan High Court. However, the Division Bench also observed that the [EPF Act](#) will not apply to the Educational Institutions before the Court and dismissed the appeals filed by the RPFCC.

13. Further on 23.02.2003, the respondent, Educational Institution filed the S.B. Civil Writ Petition before the High Court challenging the order of the State Government directing the Non-Governmental aided Educational Institution employing 20 or more persons to deposit its contribution with the RPF. The High Court disposed off the matter in favour of the Educational Institution in line with the decision in the matter of *Balbari Vidya Mandir Churu v. State of Rajasthan & others* (S.B. Civil Writ Petition No. 1085/2000). Against this decision of the High Court, the RPF went on appeal to the Division Bench of the High Court which in turn by an order dated 16.09.2002, dismissed the appeal.”

13. Considering the facts as above, the Hon'ble Apex Court referred to a similar case in the matter of M.P.Shikshak Congress and others Vs. R.P.F.Commissioner, Jabalpur, [1999(1) SCC 396] and noted in paragraph Nos. 17 and 18 as under :-

“17. The said orders, however, also refer to an additional period from 1st of August, 1988 to 1st December, 1988. According to the appellants, 1st of August, 1988, by virtue of the amended Section 16(1)(b) of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 coming into effect in the provisions of the 1952 Act are no longer applicable to them. Section 16(1)(b) provides that the 1952 Act will not apply to any establishment under the control of the State Government whose employees are entitled to the benefit of Contributory Provident

Fund in accordance with any scheme framed by the State Government conferring such benefits. Whether on 1st of August, 1988, there was any scheme in existence of the State Government which conferred Contributory Provident Fund benefit to the employees covered earlier by the [Central Act](#) of 1952 or not is a matter which the Regional Provident Fund Commissioner will have to examine if such a contention is raised before him by the appellants.

18. We, therefore, remit the matter to the concerned Regional Provident Fund Commissioner only for the limited purpose of examining whether for the period 1st of August, 1986 to 1st of December, 1988 the provisions of Employees' Provident Fund and [Miscellaneous Provisions Act](#), 1952 are applicable to the concerned institutions. The orders, however, for the period 1st August, 1982 to 1st August, 1988 are upheld.”

14. In the [Sanatan Dharam Case](#) (supra), while considering the argument of the parties as regards the effect of the State Private Schools Act with the Central Legislation, it was noted by the Hon'ble Apex Court in paragraph No.20 to 24 as under :-

“20. Further, the counsel stated that, only the Educational Institutions whose management has been taken over by the State Government under [Section 10](#) of the State Act, 1989 shall fall within the exception under [Section 16](#) (1) (b) of the [State Act](#) of 1989. [Section 10](#) reads as follows:

”10. Powers of the State Government to take over management-

(1) notwithstanding anything contained in any law for the time being in force, whenever it appears to the State Government that the managing committee of any recognized institution has neglected to perform any of the duties assigned to it by or under this Act or the rules made there under or has failed to manage the institution properly and that it has become necessary in the public interest to take over the management of such institution, it may after giving to such managing committee a reasonable opportunity of showing cause against the proposed action, take over such management and appoint an administrator to exercise control over the assets of the Institution and to run the institution for such period as the State Government may from time to time fix.

(2) Where, before the expiry of the period fixed under subsection (1) the State Government is of opinion that it is not necessary to continue the management of the institution by an administrator, such management shall be resorted to the managing committee."

21. While concluding his submissions, the learned senior counsel stated that the High Court did not take into consideration that the [Central Act](#) is more beneficial for the employees than the [State Act](#) as there is compulsory pension scheme, called "The Employees Pension Scheme, 1995" under the [Central Act](#).

22. Mr. Aruneshwar Gupta, learned Additional Advocate General, appearing for the State of Rajasthan, respondent herein submitted that, in the year 1989 the Government of Rajasthan enacted the Rajasthan Non-government Educational Institutions

Act, 1989. The Act came into force on 01.01.1993. The State Government after the enactment of the said Act has clearly occupied the field concerning the deposit of PF of the employees of Non-Government Institutions and it clearly overrides the provisions of the EPF Act, 1952. He submitted that, it is relevant to mention that the contribution to the PF pertains to Entry 24 of List III of the Schedule 7 of the Constitution of India. Therefore, as far as post 1993 period is concerned, the RPFCS do not have any subsisting legal right as that Act of 1989 of Rajasthan shall prevail and to this extent the issuance of orders dated 05.08.1997, 28.01.1998 and 24.08.1998 by the Government of Rajasthan amounted to incorrect application of law and the AG appearing for the state of Rajasthan clearly conceded to the same before the High Court of Rajasthan. Thus it is clear that the Educational Institutions are outside the purview of the EPF Act. 23. Besides, the Central Act itself contemplates non- application of the Central Act in certain situations especially enumerated under section 16 of the Act of 1952. Section 16 (1)(b) clearly mentions that the establishments which are under the control of state government will not fall within the purview of the Central Act, 1952. Moreover, there is a scheme framed for contributory PF under the chapter VIII of the Rules of 1993.

24. In conclusion it was submitted by the learned counsel for the respondent State that in the present fact scenario, the provisions of section 16(1) (b) of the Central Act, 1952 are attracted and therefore, the appellant cannot claim any right over the contributory provident fund of the employees of the Educational Institutions covered by the Act of 1989.”

15. In dealing with the argument of repugnancy under Article 254 of the Constitution, the Hon'ble Apex Court considered the effect of Section 16(1) (b) & (c) and concluded that the said provision under the Central Legislation provides for an exemption from the applicability of the EPF Act. Consequentially, the Apex Court has ruled that Article 254(2) has no applicability.

16. In the instant case, the learned Advocates for the respective sides indicate that when salary and / or non-salary grants are extended to private educational institutions, it can be construed to mean that the State Government has exercised its control over such Institutions. There is no dispute that even if an institution is without any grants-in-aid, it still needs to be recognized by the competent authority. Financial and administrative control over private schools and colleges which are getting grants-in-aid, is therefore exercised by the State Government.

17. In the Sanatan Dharam Case (supra), the Hon'ble Apex Court considered these aspects in paragraph Nos. 28 to 37, which read as under :-

“28. In order to be covered under the exception to the [EPF Act](#)..

1952 stated above, following two conditions have to be satisfied by the establishment seeking to be exempted from the provisions of the [EPF Act, 1952](#):

- 1) It must be an establishment belonging to or under the control of the Central Government or a State Government, and
- 2) It must be an establishment whose employees are entitled to the benefit of contributory provident fund or old age pension in accordance with any scheme or rule framed by the Central Government or the State Government governing such benefits.

29. We heard the parties in detail. The submissions made by the learned counsel appearing for the respondents merit acceptance. It is not in dispute that the respondent- institutions have been paying the provident fund dues to the State Government in accordance with the Scheme framed by the State Government under the [State Act](#) and thus the employees of the respondent-institutions are entitled to the benefit of the provident fund. By the orders impugned by the respondent-institutions, the State Government has sought to transfer the balance standing to its credit to the Regional Provident Fund Commissioner. Thus it is clear that the respondent-institutions have been paying in accordance with the Scheme and there is no grievance with regard to the same.

30. In respect to the contention of the respondent that the establishment belonging to or under the control of the Central Government or a State Government, it was submitted that the establishments must either be (a) belonging to or (b) under the

control of the Central Government or the State Government. In our view, the two words used in the said Section have different connotations. The words "belonging to" signifies ownership i.e. the Government owned institutions would be covered under the said part and the words "under the control of" signifies control other than ownership since ownership has already been covered under the words "belonging to". It must be also noted that the two words are separated by the word "OR" and therefore these two words refer to two mutually exclusive categories of institutions. While the institutions "belonging" to the Central or the State Government would imply the control of the State but the privately owned institutions can be "under the control of" the Government in various ways.

31. Under the State Act itself, the "Control" by the State is in the following ways:

(a) Under Section 3 of the State Act, the State Government grants recognition to the "Non-government educational institutions".

It was submitted that recognition by the State is of prime importance for running and operating an educational institution. The said recognition can be withdrawn on the failure of the institution to abide by the terms and the conditions of the grant of recognition.

(b) Under Section 7 of the State Act, the State Government grants aid to only recognized educational institutions. The aid given by the State can be used only for the purpose for which the aid has been given. Under Section 8, the institutions are thereafter required to keep accounts in the manner prescribed by the State.

It was submitted that in such manner, the State exercises Financial Control over the institutions.

(c) Under [Section 9](#), it has been prescribed that the institutions shall be governed by a managing committee and [Section 10](#) of the Act empowers the State to take over management of the institutions "whatever it appears to the State that the Managing Committee has neglected to perform the duties assigned to it by or under the Act or the Rules made thereunder.

(d) Chapter V of the Act relates to properties of the institutions and the manner in which the institutions can manage the properties of the institution. It was submitted that under [Section 13](#) of the Act, the institutions have to apply and get the approval of the competent authority set up under the said Act before transferring the management of the institution. Under [Section 15](#), restrictions have been placed on the transfer of immovable properties of the institutions.

(e) [Section 14](#) of the Act prohibits closure of any institution or its class or the teaching of any subject therein without notice in writing to the competent authority. It was submitted that the government thus has Functional control over the institution.

(f) Chapter VI of the State Act deals with recruitment and removal etc. of employees. Their salary, conditions of service, provident fund, code of conduct are all prescribed under the Act. [The Act](#) further prescribes setting up of a Tribunal for resolution of the disputes whose decision is final and binding on the parties.

32. The State Government also exercises Administrative Control over the institution. [Section 17](#) deals with the manner of

recruitment and [Section 18](#) deals with the procedure in which the employees may be removed or dismissed or reduced in rank. [Section 28](#) permits the State Government to prescribe the code of conduct of the employees and [Section 29](#) enjoins upon the institutions not to give to its employees a pay lesser than the scales of pay and the allowances paid to similar categories of the State Government.

33. In our view, the [State Act](#) is a complete code in itself with regard to the educational institutions and the State Government exercises substantive control over the institutions even though the institutions are not "owned" by it. The word "control" has not been defined under the [EPF Act, 1952](#).

34. However, this Court in *Shamrao Vithal Coop. Bank Ltd. vs. Kasargode Panduranga Maliya*, (1972) 4 SCC 600 at page 604 has cited with approval the meaning of the word "control" as it appears at page 442 of *Words & Phrases Vol.9, Permanent Edition* as under:

"The word "control" is synonymous with superintendence, management or authority to direct, restrict or regulate."

In the case of [State of Mysore vs. Allum karibasappa](#), (1974) 2 SCC 498 at page 501, this Court defined the words "word control" as under:

"The word "control" suggests check, restraint or influence Control is intended to regulate and hold in check and restrain from action."

35. We further observe that the State Government has the power

of Superintendent or the authority to direct, restrict or regulate the working of the educational institutions. It was, therefore, submitted that the institutions had satisfied both the conditions (i) and (ii) mentioned above and as such they would fall within the exception contained under [Section 16\(1\)\(B\)](#) of the [EPF Act, 1952](#).

36. In this context we may refer to the decision cited by the appellant in the case of [M.P. Shikshak Congress vs. R.P.F. Commr.](#), (1999) 1 SCC 396, in which it was stated that the provisions of the [E.P.F. Act](#) apply in supersession of the [State Act](#). This contention is not correct; the said case is clearly distinguishable on facts as has been noted in the judgment itself. [The State Act](#) did not provide for establishment of any Scheme as has been provided under the provisions of the [State Act](#) in the State of Rajasthan. In this regard, this Court noted as under:

"12.....[The Act](#) did not even provide for any scheme for setting up a provident fund. [The Act](#) incidentally required that the institutional contribution to any existing provident fund scheme should be paid into the institutional fund set up under the said Act."

37. In addition to the above, the said case is also distinguishable with regard to the contention of repugnancy and [Article 254\(2\)](#) of the Constitution. In the said case, the Act in relation to the State of Madhya Pradesh came into force prior to the application of the provisions of the [EPF Act, 1952](#) on educational institutions and therefore the benefit of [Art. 254\(2\)](#) was not available to it. In the

present case, however, admittedly the [State Act](#) has been enacted and has received the assent of the president subsequent to the applicability of the [EPF Act, 1952](#) on the educational institutions. In this regard, this Court in the said case noted as under:

"13. It was by reason of the notification of 06.03.1982 that the [Central Act](#) was extended to educational institutions. The Employees' Provident Funds and [Miscellaneous Provisions Act, 1952](#), therefore, became applicable to educational institutions in the State of Madhya Pradesh for the first time on 6-3-1982. This was much later than the enactment of the [State Act 20 of 1978](#). The parliamentary enactment, therefore, would prevail over the [State Act 20 of 1978](#), assuming that the [State Act](#) of 1978 created or effected any scheme for provident fund. [Article 254\(2\)](#), therefore, has no application in the present case."

18. The M.E.P.S. Act, 1977 has received the assent of the President on 16/03/1978. The said assent was published in the Maharashtra Government Gazette, Part IV on 20/03/1978 and has, therefore, been brought into effect from the said date.

19. While concluding in the [Sanatan Dharam Case](#) (supra), the Hon'ble Apex Court observed in paragraph No.39, 40 and 41 as under :-

"39. Learned counsel appearing for the respondent in C.A. Nos.

715-737 of 2005 also drew our attention to the counter affidavit filed on behalf of the State of Rajasthan and the educational institutions. It is submitted that the order of recovery is patently illegal and unjustified because of the fact that the respondent institution does not come under the purview of the Act of 1952. He would further submit that after the amendment was made in [Section 16](#) of the Act by the EPF and [Miscellaneous Provisions Amendment Act](#) (33 of 1988) all establishments belonging to or under the control of the Central Government or State Government have been exempted from the provisions of the Act. Arguing further, he submitted that the words in [Section 2\(b\)](#) and [2\(a\)](#) are so clear and unambiguous that no further interpretation need be made to amplify the same and that the provisions made in the enactment of 1989 make it clearer that the respondent institution is a recognized educational institution managed by the private management and is within the effective management of the State Government and, therefore, it is entitled to be excluded from the applicability of the [Central Act](#), 1952.

40. Learned counsel appearing for the respondents in all the other appeals adopted the arguments of Mr. Sushil Kumar Jain.

41. For the foregoing reasons, all the civil appeals filed by the Regional Provident Fund Commissioner stand dismissed and the judgment and order passed by the Division Bench of the High Court dated 16.09.2002 and all the judgments on different dates by different Division Benches stand affirmed. No costs.”

20. In the light of the above, considering the law laid down by the

Hon'ble Apex Court in the D.A.V.College case (supra) and the Sanatan Dharam Girls School case (supra), it is apparent that those private schools and colleges, which are controlled or owned by the State Government would be covered by Rule 19 and 20 of the M.E.P.S.Rules, which read as under :-

"19. Pension.

An employee of an aided secondary school and aided Junior College of Education working on full time basis and retiring on or after 1st April 1966 and an employee of an aided primary school working on full time basis and retiring on or after the 1st April 1979 but who have opted for pension and the employee appointed on or after the above-mentioned respective dates shall be eligible for pension at the rates and in accordance with the rules as are sanctioned by Government specifically to the employees of private schools.

20. Provident Fund.

(1) *Every employee (not being an employee who has opted for pension) of an aided or unaided school working on a full time basis or every employee employed on part-time basis in more than one school run by the same Management and doing full-time load of work in these schools, shall subscribe to the Contributory Provident Fund under the Contributory Provident Fund Rules (Bombay) as in force from time to time.*

(2) *Every employee of an aided private secondary school*

working on a full time basis who was appointed before the 1st April 1966 and who had exercised in writing his option for a Contributory Provident Fund Scheme shall subscribed to that Fund as per rules made by Government and are in force in this behalf.”

21. As a result, all such employees (except those who have opted for pension) working in aided or unaided schools are mandated to subscribe to the contributory provident fund under the Contributory Provident Fund Rules (Bombay). Consequentially, keeping in view that the State Government has administrative control even if a school or college is not operated on grant-in-aid basis, Rule 20(1) would make it mandatory for every employee, who has not opted for pension, to subscribe to the C.P.F. notwithstanding whether he is working full time or part time in an aided or unaided school.

22. In all these matters before the Court, the periods for which recovery is initiated by the respondent A.P.F.C. is post introduction of Rule 20 under the 1981 Rules, which were brought into effect on 16/07/1981. These rules have been framed under Section 16(1) and (2) of the M.E.P.F. Act, 1977. In this view of the matter, it is quite evident that after the introduction of Rule 20 from 16/07/1981, the

authority under the E.P.F. Act would have no jurisdiction to recover P.F.dues in relation to every employee who has subscribed to the C.P.F. If any period of service for which P.F. Contributions are due from any educational institution prior to 16/07/1981, the P.F. Authorities under the E.P.F. Act could exercise jurisdiction for recovering the dues.

23. In the light of the above, these petitions are allowed. The impugned orders issued by the competent authority under the E.P.F. Act covering the periods after 16/07/1981, stand quashed and set aside. Wherever such recoveries pertain to the periods prior to the said date 16/07/1981, the E.P.F. Authorities could exercise jurisdiction.

24. However, before parting with these matters, I deem it necessary to issue directions to the State Government/respondent No.1 herein to cause an enquiry into the C.P.F. Contributions of all these petitioners / institutions and all such managements in the State of Maharashtra considering the effect of Rule 20(1) of the 1981 Rules only to ensure that contributions of all employees under Rule 20(1) are not due and pending. Since provident Fund is a part of beneficial legislation, it would be necessary for the State Government to ensure

that no recoveries or dues escape their attention. The competent department of the State Government would therefore be at liberty to address each of these petitioners and all such institutions in the State and call for information as it may deem necessary so as to scrutinize and assess whether any dues are outstanding under Rule 20(1) of the M.E.P.S.Rules. After considering the replies of these petitioners and such managements, respondent No.1 would be entitled to pass necessary orders for ensuring the payments under the C.P.F. This is intended to ensure the scrupulous compliance of Rule 19 and 20 of the MEPS Rules.

25. In the event there are any P.F. accumulations with the E.P.F. Authorities, the same shall be transferred to the C.P.F. Accounts of each employee, considering the observations of the Hon'ble Apex Court in the Sanatan Dharam Girls case (supra).

26. The State of Maharashtra, through its Department of Education, shall comply with the directions set out in paragraph No.25 above and shall complete the process of inquiry all over the State within a period of six months. The Secretary, Department of Education, shall report compliance to the Registrar (Judicial) at the Aurangabad Bench on or before 31/10/2017.

27. Rule is, therefore, made partly absolute in the above trms.

28. All pending civil applications do not survive and stand disposed of.

(RAVINDRA V. GHUGE, J.)