

**\*IN THE HIGH COURT OF DELHI AT NEW DELHI**

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**W.P.(C) 6679/2000**

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**Date of decision: 3<sup>rd</sup> May, 2010**

**ALL INDIA ASSOCIATION FOR CHRISTIAN  
HIGHER EDUCATION**

**..... PETITIONER**

Through: Mr. Ravinder Sethi, Sr. Advocate with  
Mr. Rajiv Kumar Ghawana & Mr.  
Puneet Sharma, Advocates

Versus

**PRESIDING OFFICER, EMPLOYEES PROVIDENT  
FUND APPELLATE TRIBUNAL & ANR.**

**..... RESPONDENTS**

Through: Mr. Rajesh Manchanda, Advocate

***CORAM :-***

**HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

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|----|---|-----|
| 1. | Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not?                                | YES |
| 3. | Whether the judgment should be reported in the Digest?                | YES |

**RAJIV SAHAI ENDLAW, J.**

1. The petitioner by this petition impugns the order dated 13<sup>th</sup> January, 2000 of the respondent no.2 Regional Provident Fund Commissioner (RPFC) and the order dated 15<sup>th</sup> May, 2000 of the respondent no.1 Employees Provident Fund Appellate Tribunal, holding the provisions of The Employees' Provident Funds & Miscellaneous Provisions Act, 1952 to be applicable to the petitioner for the reason of the notification dated 19<sup>th</sup> February, 1982 of the Government of India issued in exercise of power under Section 1(3)(b) of the Act and specifying the following classes of establishments in which twenty or more persons are employed as establishments to which the said Act applies namely:

- (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 a 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.

2. The petitioner is a Society incorporated under the Societies Registration Act, 1860. The objectives for which the petitioner is established *inter alia* are:

- (i) To promote, in general, sound education in all institutions of higher learning in India ..... to help, at all levels, in the evolution of policies and programmes aimed at securing this; to assist in the attainment and maintenance of standards of excellence in higher education; to encourage integrity, efficiency, scholarship and dedication in students, teachers and educational administrators; and in particular to unite member-colleges for initiative and action regarding any or all of these objects.
- (ii) To promote and undertake research, pure and applied, bearing upon education and the needs of human and nation development in .....
- (iii) To undertake on its own and / or to enable member – colleges to carry out or assist any programmes for promoting the welfare or the uplift of the people in any rural areas and to undertake or assist any programmes of rural development and to train the personnel for implementation of rural development.
- (iv) To collect and circulate useful and worthwhile information to publish journals, books, pamphlets and

other literature and to arrange for meetings, seminars, conferences, consultations, etc.

- (v) To initiate and assist educational projects in colleges in India which will stimulate, encourage and strengthen them to develop maximum efficiency ..... creative experimentation and commitment in all areas of higher education.

3. The RPFC, from the brochure issued by the petitioner, found that the programme units of the petitioner consisted *inter alia* of Think Cell; that the petitioner is engaged in imparting education in its various units and imparting training to its associate members in the programme units. It was held that the petitioner is engaged in education. Accordingly, the provisions of the Act were held applicable to the petitioner.

4. Upon the petitioner preferring an appeal, the Appellate Tribunal held that the petitioner is related to every branch of education and is imparting systematic knowledge.

5. The senior counsel for the petitioner has contended that the petitioner has no faculty / teachers of its own; the petitioner holds seminars for promoting education and in which various guest speakers are invited and teachers / faculty members of the member educational institutions of the petitioner participate. It is argued that the status of the petitioner is like that of University Grants Commission; the Appellate Tribunal also accepted the same but nevertheless erroneously held the petitioner to be imparting education. It is further urged that though evidence was led by the petitioner before the RPFC and written arguments filed but neither has been considered. It is contended that the RPFC is required to apply its mind but the order in the present case has been passed

mechanically. Reliance is placed on the judgment dated 4<sup>th</sup> September, 2006 of this Court in WP(C) 508/1982 titled *M/s Suppliers, New Delhi Vs. Regional Provident Fund Commissioner*. To demonstrate the same, it is contended that even though it was found in the order that the petitioner had only eighteen employees, the provisions of the Act were nevertheless held applicable to the petitioner.

6. The counsel for the petitioner after the conclusion of hearing has also filed copies of judgment in (i) *M/s Suppliers, New Delhi Vs. Regional Provident Fund Commissioner* (supra), (ii) *Lakshmi Restaurant, New Delhi Vs. The Regional Provident Fund Commissioner* 1975 LAB. I.C. 1186, (iii) *Polo Amusement Park Ltd. Vs. EPF Appellate Tribunal* 147 (2008) DLT 233, (iv) *M/s Khoja Lime Udyog Vs. RPF Commissioner* (1992) I LLJ 903 (Raj), (v) *Pamadi Subbarama Chetty Vs. Mirza Zewar Ali* AIR 1960 Mysore 14 (vi) *The Regional Provident Fund Commissioner Vs. T.S. Hariharan* 1971 (2) SCC 68 (vii) *Ramala Sahkari Chini Mills Ltd. Vs. Employees' Provident Fund Appellate Tribunal* (2000) 9 SCC 540 & (viii) *Vatika Plantations Pvt. Ltd. Vs. Regional Provident Fund Commissioner* 1996 (74) FLR 2769, in support of the contention that the findings of RPFC and the Appellate Authority should be based on evidence and relevant material; the said authorities are required to do effective determination in a quasi judicial manner; they should make independent enquiry and their orders should not be made by placing reliance on the report of their Inspector only; that in the absence of clear language, the Courts should not in the guise of liberal construction of social welfare legislation put any construction which will lead to absurdity.

7. The counsel for the RPFC besides supporting the orders impugned in the petition has also contended that this Court in the exercise of writ jurisdiction would only take an overview of the matter and only ensure that no prejudice is caused to the petitioner. The RPFC has along with its counter affidavit also filed copy of a notification dated 16<sup>th</sup> November, 1974 extending the applicability of the Act to all Societies/Clubs/ Associations which render services to their members without charging any fee over and above the subscription fee or membership fee. It is contended that the petitioner being a Society, even if not covered by the notification (supra) dated 19<sup>th</sup> February, 1982, would in any case be covered by the notification dated 16<sup>th</sup> November, 1974. It is thus contended that no prejudice has been caused to the petitioner.

8. Though the senior counsel for the petitioner also sought to urge that neither of the authorities have satisfied themselves of the petitioner employing more than twenty persons but upon it being pointed out that no ground in this regard has been urged in the memorandum of the writ petition, the senior counsel for the petitioner has fairly conceded that the petitioner is engaging more than twenty persons. During the course of hearing, it has also transpired that the petitioner has its own Provident Fund Trust. However, the senior counsel for the petitioner contends that according to the petitioner, the petitioner is outside the ambit of the Act and does not desire to be governed by the provisions of the Act.

9. At the outset, I may state that the question whether the establishment of the petitioner is covered by a particular notification or not is a mixed question of law and fact. The scope of the writ petition against the concurrent findings of the RPFC and the Appellate Authority is limited. This Court can only examine

whether any material evidence has not been considered or whether any evidence which ought not to have been read has been considered. Re-appreciation of evidence is outside the domain of scrutiny in the writ jurisdiction. The petitioner has neither raised any ground on which the writ ought to be entertained nor urged any such argument. The petitioner would want this Court to independently adjudicate whether it is covered by the notification or not. The same cannot be permitted.

10. I am also of the view that the best measure of the activities of the petitioner is its objectives as set out in its Memorandum of Association and as recorded above. The same unequivocally shows that the petitioner is an institution in which research is carried on and/or in which the activity of imparting knowledge or training is systematically carried on.

11. The word “systematic” is defined in the Shorter Oxford English Dictionary 6<sup>th</sup> Edition *inter alia* as arranged or conducted according to a system, plan or organized method or as acting according to a system, regular and methodical and/or as habitual, deliberate and premeditated. Similarly, the Supreme Court in the *The State of Bombay Vs. The Hospital Mazdoor Sabha* AIR 1960 SC 610, though not in the context of the Provident Fund Act held “as a working principle it may be stated that an activity systematically or habitually undertaken for the production or distribution of goods or for the rendering of material services to the community at large or a part of such community with the help of employees is an undertaking. Such an activity generally involves the co-operation of the employer and the employees and its object is the satisfaction of material human needs. It must be organised or arranged in a manner in which

trade or business is generally organised or arranged. It must not be casual nor must it be for oneself nor for pleasure. Thus the manner in which the activity in question is organised or arranged, the condition of the co-operation between employer and the employee necessary for its success and its object to render material service to the community can be regarded as some of the features which are distinctive of activities.....”

12. The language of the notification dated 19<sup>th</sup> February, 1982 permits wide amplitude. The notification is for bringing establishments within the ambit of the Act which itself is a welfare legislation. The Supreme Court in *Andhra University Vs Regional Provident Fund Commissioner of Andhra Pradesh* (1985) 4 SCC 509 has held that it has to be borne in mind that the Act is a beneficial piece of social welfare legislation aimed at promoting and securing the well being of the employees and the Court will not adopt a narrow interpretation which will have the effect of defeating the very object and purpose of the Act. The notifications under the Act thus also have to be liberally construed so as to bring employees of maximum number of establishments within the ambit of the Act. The notifications under Section 1(3)(b) are not required to be establishment-specific. There can be one notification with respect to a class of establishments. The notification in the present case is of the latter category. Such notifications necessarily have to be generic and a distinction here or a difference there cannot be used to contend that an establishment which generally would be covered by the notification, owing to such difference or distinction is exempt therefrom. The notification dated 19<sup>th</sup> February, 1982 is intended to cover all educational, research, training, scientific institutions and it cannot possibly be contended that

the petitioner does not fall in this category. The counsel for the RPFC also invites attention to the information submitted by the petitioner on 17<sup>th</sup> November, 1997 to the RPFC. In the same, the petitioner described itself as engaged in “educational activities”.

13. The Shorter Oxford English Dictionary 6<sup>th</sup> Edition defines “promote” as to advance or raise to a higher rank or position or to develop, help forward, or support actively and or to take necessary steps with a particular objective. The petitioner cannot advance, raise or develop or promote education without imparting knowledge. Black’s Law Dictionary 6<sup>th</sup> Edition defines “promote” as to contribute to growth, enlargement, or prosperity; to forward; to further; to encourage; to advance. The petitioner in the affidavit of its General Secretary filed before the RPFC deposed that the college principals and teachers who participate in the training courses organized by the petitioner have to pay registration fee; that the petitioner publishes journals on education and gives grants for conducting training courses or seminars to member colleges. In my opinion, from the said admissions alone it is established that the petitioner is imparting knowledge and training. The same cannot be said to be done in a casual manner.

14. I have recently had occasion to consider the notification dated 19<sup>th</sup> February, 1982 in *Professional Assistance for Development Action Vs. Presiding Officer, Employees Provident Fund Appellate Tribunal MANU/DE/0425/2010*. The said judgment was brought to the attention of the senior counsel for the petitioner. The senior counsel sought to distinguish the same by contending that the question involved therein was whether imparting of

knowledge was systematic or not; here there is no imparting of knowledge or training. However, the said contention is found to be contrary to the admissions made before the RPFC.

15. The senior counsel for the petitioner has sought to urge that the witness of the petitioner was not cross examined by the RPFC; that there are certain other errors in the orders of the RPFC and the Appellate Tribunal. However, such discrepancies cannot reap any benefit to the petitioner.

16. Though RPFC cannot be permitted to, before this Court, seek to justify applicability of the Act on the petitioner under a notification different from that on ground whereof notice under Section 7A was issued and determination made but from notification dated 16<sup>th</sup> November, 1974 (supra) making the provisions of the Act applicable to all societies, which petitioner admittedly is, it is evident that by bringing the petitioner within the net of the Act, no injustice has been done to the petitioner. The petition is liable to be dismissed on this ground alone.

17. No ground for interference in the orders impugned is made out. The writ petition is dismissed. No order as to costs.

**RAJIV SAHAI ENDLAW  
(JUDGE)**

**3<sup>rd</sup> May, 2010**  
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