

**(2012) 03 KL CK 0099**

**In the High Court Of Kerala**

**Case No :** Writ Petition (C) No. 3248 of 2006 (J)

Attukal Bhagavathy Temple Trust

APPELLANT

Vs

Regional provident Fund Commissioner Employees" provident  
Fund Organisation and Another

RESPONDENT

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**Date of Decision :** 05-03-2012

**Acts Referred:**

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 2A, 7A, 7B

**Citation :** (2012) 135 FLR 679 : (2012) 3 LLJ 736 : (2012) LLR 541

**Hon'ble Judges :** A.M. Shaffique, J

**Bench :** Single Bench

**Final Decision :** Allowed

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## **Judgement**

A.M. Shaffique, J.—The petitioner, Attukal Bhagavathy Temple Trust, challenges Exts.P3 and P6 orders Issued by the Employees" Provident Fund Organization, Imposing on the petitioner the liability to pay an amount of Rs. 98,56,116.45 u/s 7A of the Employees" Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the "Act") and rejecting an application for review filed by the petitioner u/s 7B of the Act and modifying the amount to Rs. 98,71.227.85 ps thereby confirming the demand. It is the contention of the petitioner that the Trust has a hospital, an Industrial Training Center and also an Estate having rubber plantation. The hospital is covered under the Act with effect from 30.4,1991.

2. The petitioner submits that the Industrial Training Center and the/Estate had never employed more than 20 persons at any point of time and those being separate establishments, was not required to be covered under the Act.

3. However, it is alleged that on the basis of some complaint, the Employees" Provident Department called upon the petitioner to produce various records relating to all the establishments and mere-after issued an order u/s 7A by treating all the establishments as a single unit and then Directing to pay the

amount as demanded in Ext. P3. Though a review was filed under S.7B of the Act, the demand was confirmed by Ext.P6 and hence the challenge.

4. The main contention of the petitioner is that the temple, hospital, Industrial Training Center and the Esta'e and other activities, are separate entities, and having no functional integrality and therefore the staff of all the establishments cannot be treated as a single entity and they do not constitute one establishment and therefore the orders passed as evident from Exts.P3 and P6 are totally baseless and illegal. Learned counsel appearing for the petitioner also relied upon the following judgments to contend that the units are not inter-dependent and there is no functional integrality between the separate establishments and therefore these establishments cannot be treated as a single establishment to come within the purview of the Act and Schemes framed thereunder. In the *Management of Pratap Press v. Delhi Press Workers' Union*, AIR 1960 SC 1213), while considering the issue whether two units of the same owner is one industrial unit or two distinct units, the Supreme Court while narrating various Instances like unity of ownership, unity of management and control, unity of finance, unity of labour and employment and unity of functional integrality as tests which might be useful In deciding whether two units form part of the same establishment held that "Of all these tests the most Important appears to us to be that of functional "integrality" and the question of finance, employment and of labour." The Court has to consider how far there is functional interdependence, so that one unit cannot exist conveniently and reasonably without the other. It is also held that a further question may arise regarding whether in matters of finance and employment, the employer has actually kept the two units distinct or integrated. In the said case, the owner had a Press and published newspaper in the press. There was nothing to show that the owner had mixed up the capital of the two, the profits of the two and labour force of the two units and It was further held that the Press and the newspaper were distinct and separate industrial units. Though the said decision relates to the definition of Industry under the Industrial Disputes Act, the same proposition equally applies to the provisions of the Act as well. It is held by the Supreme Court in *Regional Provident Fund Commissioner and another v. Dharamsi Morarji Chemicals Co. Ltd.*, 1998 (1) LLJ 1060] that even if an establishment is found, to consist of different departments or branches and if the departments branches are located at different places, the establishment would still be covered by the net of Section 2A and the branches and departments cannot be said to be only on that ground not a part and parcel of the parent establishment. But merely because there is common ownership, it cannot be held that there was inter-connection between the two units. What is relevant is whether there was supervisory, financial or managerial control between the establishments. In the absence of any such evidence, It may not be possible for the department to treat separate establishments as a single unit. This position is further emphasized in various judgments of the High Courts as seen in *Christian Association for Radio and Audio Visual Service (CARAVS) v. The Regional Commissioner, Employees P.F. &*

M.P. 1979 LIC 283), Devesh Sandeep Associates & Ors. v. Regional Provident Fund Commissioner, Bangalore, 1997 (1) LLJ 1167], Niton Industries v. Union of India, 2000 (1) LLJ 1518, Kadamba Sub-Urban Transport Corporation Ltd., Goa v. Assistant Provident Fund Commissioner, Goa, 2000 (1) LLJ 624).

5. On the other hand, learned standing counsel on behalf of the Department contended that the enquiry conducted by the Department revealed that there was functional Integrality between the establishment and therefore the department is justified in treating all the establishments as a single unit.

6. It is clear from the Impugned order Ext.P3 that a proper enquiry was not conducted in the matter. The enquiry was initiated on the basis of a complaint from the Employees of the Trust and the Trust was called upon to produce records from 1980 onwards and since it was stated that the records prior to 1.4.1995 were not available, enquiry was conducted with the available records. On a bare reading of the nature of establishments it could be seen that they are all separate and distinct units. Though they are all owned by the Trust the point is whether there is any functional integrality between the said units. Whether one establishment can be run without the other establishment or whether all the establishments are maintaining the same accounts relating to financial matters, or whether the employees can be transferred from one unit to other are matters to be considered while treating separate units as a single establishment for the purpose of the Act. None of the above features had been found out by the authority in Ext.P3, whereas it has come to a conclusion that the Trust is a composite establishment under the Act and engaged in many notified activities. That by itself is not enough to treat different units as a single establishment. I do not think that the authority had properly considered this matter and had imposed liability on the Trust without even considering the basic requirements which are required to be verified before passing the impugned orders. It is the contention of the petitioner that all the units are separately managed and on a bare reading of the nature of activity of each establishment by itself would indicate that it will not be a case where each unit is dependent on the other and there is functional integrality between the units. Ext.P5 itself would show that every unit is independent and has no functional integrality. It can never be said that a Hospital is dependent on an industrial training centre or an Estate. The nature of employment differs and there is no unity of employment. So is the case of STD Booth, sale of cassettes, auditorium, renting of Bus etc. There is no material to indicate that a single account is being maintained. This feature by itself is sufficient to set aside P3 and P6. Hence relying upon the judgments cited above it has to be held that one unit can exist conveniently and reasonably without the other. In that view of the matter the impugned orders are liable to be set aside.

This writ petition is therefore allowed and Exts. P3 and P6 stand quashed.