

(2022) 05 CAL CK 0036

In the Calcutta High Court

Case No : MAT No. 1100, 1101, 1140, 1141, 1688, 1696, 1697, 1699, 2090, 2190, 2191, 2193 Of 2017, 75, 76, 77, 103, 104, 112, 113, 169, 350, 351, 352, 353, 354, 355, 874 Of 2018, FMA 1141 Of 2019, 740, 741 Of 2021, 168 Of 2022, I.A. NO. CAN 1, 2 Of 2018 (OLD CAN 210)

Central Board Of Trustees

APPELLANT

Vs

Registrar, E.P.F Appellate Tribunal & Anr.

RESPONDENT

Date of Decision : 13-05-2022

Acts Referred:

Constitution Of India, 1950 — Article 38, 43, 226, 227
Employees' Provident Fund And Miscellaneous Provisions Act, 1952 — Section 1(3) 2(h), 2(ia), 2(ib), 2(j), 2(kA), 2(kB), 2(kb), 2(l), 2(aa), 5, 5A, 5A(1), 5A(3), 5A(4), 5A(5), 5A(6), 5A(7), 5A(8), 5A(9), 5AA(1), 5AA(2), 5AA(3), 5B, 5B(3), 5C, 5D(1), 5D(3), 5DD, 5E, 5(2), 6, 6A, 6C, 6C(2), 6(1), 6A(2), 7A, 7A(1), 7A(2), 7B, 7C, 7I, 8, 8A, 8B, 13(1), 14, 14B, 16, 17(1), 18, 19, 19(a), 19(b), 20, 21, 22
Preventive Detention Act, 1950 — Section 7

Citation : (2022) 05 CAL CK 0036

Hon'ble Judges : T.S. Sivagnanam, J;Hiranmay Bhattacharyya, J

Bench : Division Bench

Advocate : S.C. Prasad, Anil Kumar Gupta, Aparna Banerjee, Soumya Majumdar, S.P. Tewary, Susanta Pal, S.K. Singh, Ravi Kumar Dubey

Final Decision : Allowed

Judgement

1. These intra Court appeals have been filed by the Central Board of Trustees, Employees' Provident Fund Organization through Regional Provident Fund Commissioner, Kolkata. The contesting respondent in all the appeals are the employers and the other respondent is the Employees' Provident Fund Appellate Tribunal, New Delhi represented by its Registrar (Tribunal).

2. The appellant had filed the writ petitions challenging the orders passed by the Tribunal in appeals filed by the employers. The Learned Tribunal had allowed the appeals filed by the employer to a limited extent and reduced the damages payable by the employer by a certain percentage. The writ petitions were dismissed at the admission stage, not on merits but on the ground of

maintainability as the Central Board of Trustees, Employee's Provident Fund organization cannot be treated to be aggrieved over the orders passed by the Learned Tribunal. This is a common finding in all the orders which are impugned in this bunch of appeals. In certain cases the learned Writ Court had not only followed the order impugned in MAT No. 1141 of 2017 etc. and while holding the writ petition to be not maintainable at the instance of the Central Board of Trustees also rejected the prayers sought for on the ground that the employer having paid the liability in terms of the order passed by the learned Tribunal and the authorities having accepted the said payment are precluded/estopped from challenging the order of the learned Tribunal. Thus, broadly on the above mentioned two grounds the writ petitions were dismissed. As noted, the writ petitions have all been dismissed at the admission stage as such there was no occasion for the employers to file their affidavit-in-opposition. That apart, the question of maintainability appears to have been suomoto raised by the learned Writ Court at the first instance and thereafter the appellant and the employers have been heard on such issue and the decision has been taken. Therefore, the present appeals lie in a very narrow compass as the issue we are to decide is whether the writ petitions as filed by the appellants in terms of the description mentioned in the cause title was maintainable and whether the department was estopped from challenging the order of the learned Tribunal on the ground that the authorities of the department have recovered/ accepted the payment made by the employers in terms of the order passed by the learned Tribunal.

3. Before we examine the contentions placed before us, we first note as to the broad reasons assigned by learned Single Bench to hold that the writ petitions at the instance of the appellant (as described) is not maintainable. The learned Single Bench firstly faults the description of the writ petitioners as Central Board or Central Board of Trustees Employees' Provident Fund Organization, the Court held that there is nothing of the sort of Employees' Provident Fund Organization in the whole scheme of the Act, and this must be the creation of the Provident Fund authorities describing themselves an organization and therefore, the writ petition filed by such non-existing organization or in the name of a fictitious body should fail. Secondly, the Learned Writ Court holds that the writ petitions arise out of the orders passed by the learned Tribunal in appeals filed by the employers and the Central Board of Trustees was not a party to appeal petitions and treating the appellant as a third party, the writ petition at the instance of the appellant is not maintainable. The third aspect which the learned Writ Court has considered, is the scheme of the Act. After referring to Section 5 of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (the Act for brevity) it is observed that the fund shall be administered by the Central Board constituted under Section 5 A of the Act, the expression "fund" has been defined in Section 2(h) of the Act to mean the Provident Fund established under a scheme. The powers and functions of the Central Board have been provided under Section 5A (3) to (9) of the Act and all these sub-sections concern the administrative issues and maintenance of accounts of the Central Board of its

income and expenditure, method of auditing, its obligation to submit to the Central Government annual report of its work and activities etc. It is stated that Section 5AA (1) of the Act deals with the executive committee to assist the Central Board in the performance of its functions. The learned Writ Court looks into the Employees' Provident Fund Scheme, 1952 (the Scheme) and in particular Para 11 to 18 of the scheme and notes that those are of pertaining to amendment and procedure for holding meetings of the Central Board of Trustees or its executive committee or regional committee. The Court also notes Para 19, 22 and 24 of the scheme, and then proceeds to hold that Section 5 A of the Act and Chapter III of the scheme only confers power upon the Central Board of Trustees for the administration of the fund vested in it and unless and until the fund is vested, the Central Board of Trustees cannot assume jurisdiction. The learned Writ Court further proceeds to hold that if administration of fund is the only sphere where the Central Board can exercise its jurisdiction it follows as a natural corollary that it cannot exercise any powers which does not fall within its jurisdiction. In other words, even if there is delegation of power of the Central Board it being beyond its statutory limits the same must be deemed to be an improper delegation or excessive authorization. Further, the Regional Provident Fund Commissioner (RPFC) or the Assistant Provident Fund Commissioner (APFC) exercise power for recovery of provident fund dues as provided under the Act and if such power is not conferred on the Central Board they cannot file a writ petition challenging the order of the Tribunal as it is clearly outside the scope of its function i.e merely administration of a fund. On behalf of the appellant it was contended that in the year, 1989 there has been a delegation of powers by the Central Board in favour of the RPFC/ APFC to sue or be sued in its name and in this regard, they relied on Section 5C of the Act. It was contended on behalf of the appellant that Section 5C of the Act declares that Board of Trustees constituted under Section 5A or 5B of the Act to be a body corporate under name specified in the notification constituting it and it has perpetual succession and a common seal and shall be sued or be sued and consequently writ petitioners were maintainable. This contention was negative by the learned writ court by holding that it overlooks that Section 5C is not concerned with the Central Board of Trustees alone. Further if the power to sue is sought to be interpreted in respect of any matter which does not fall within the jurisdiction of the Central Board of Trustees such power plainly cannot be exercised by encroaching upon the jurisdiction of some other authority under the Act. Further, the statute confers no power to recover contribution or levy and collect damages with the Central Board of Trustees. It was observed that if the Central Board of Trustees is competent to sue an establishment why was it not mentioned in the original order passed by the APFC or why was not an order passed by the Central Board of Trustees and why the RPFC alone defended the appeal and why the Central Board was not made a party at the appeal stage and therefore, negated the contentions of the appellant. Further it was contended on behalf of the appellants that the Central Board consists of 43 members and it was contemplated by the legislature to evolve a procedure by which action can be taken on behalf of the

Central Board by its delegatee namely, RPFC/ APFC. Therefore, in a case if the Tribunal had committed error in passing an order without following the procedure of law, the Central Board of Trustees cannot be without any remedy. This argument was not accepted by the learned Writ Court, by referring to Paragraph 24 A of the scheme and observing that the Central Board's power to delegate is restricted to sanctioning expenditure of any item whether in the nature of capital or revenue expenditure etc and these are the only sphere where the Central Board may delegate its authority to the Chairman. The appellant placed reliance on a resolution passed in the 109th of the meetings of the Central Board on April 4, 1999, whereby the Central Board approved proposals regarding delegation of power to the law officers, RPFCs/ APFCs to institute, file, contest, execute and defend all legal proceedings by or against the Central Board of Trustees as the ultimate answer to the issue raised in the petitions. The learned Writ Court rejected such argument by holding that such delegation was impermissible in view of paragraph 24 A of the scheme. It was argued on behalf of the appellant that if the Central Board does not have power to take legal proceedings against any establishment for recovery of the due it would amount to frustrating the very object as mentioned in Section 5B(3) of the Act. As in the said provision, the expression used is "as it may consider necessary for the efficient administration of the scheme, pension scheme and insurance scheme". The learned Writ Court rejected the argument by holding that Section 5B has nothing to do with legal proceedings to be taken by the Central Board as it deals only with the appointment of the officers and it mentions only for efficient administration of the scheme and not for legal proceedings. The learned Writ Court then proceeds to consider the definition of "fund" as mentioned under Section 2(h) of the Act states that "fund" means the provident fund established under a scheme and the use of the definite article "the" before the words "provident fund" and the indefinite article "a" before the word "scheme" has to be understood with interpretative subtleties coupled with fact that the word "establish" has been used in its part particle form. Therefore, the learned Writ Court holds the word "fund" if etymologically analyzed and understood means the provident fund which has been established under a scheme and the fund must be a specific one expressed through the word "the" and it cannot be something non-specific which is yet to come to the hand of the authorities. Therefore, the Court proceeds to hold if the moneys have not yet come to the hands of the provident fund authorities are also included within the definition of "fund" one wonders how the Central Board shall administer the same. Therefore, unless the "fund" is vested in the Central Board it does not derive any right to administer the same. The money liable to be recovered from the employers has been deliberately kept outside the definition of the word "fund" by the legislature. Further, with regard to the power of the Central Board under Section 14B of the Act which deals with the power to reduce or to waive the damages under circumstances stated therein, it was held, that being a policy decision has to be taken by the highest authorities. The appellants finally contended that writ petitions were filed in the name of the RPFC and the same had to be discontinued on account of an order

passed by a learned Single Bench of this Court in WP No. 18275(W) of 2013 dated June 5, 2014, wherein the Court held that the RPFC in its individual capacity cannot prefer a writ petition challenging an order passed by the learned Tribunal and the competent authority to file a petition has been recognized under Section 5C of the Act which is the Central Board of Trustees. The learned Writ Court in the impugned order held that the order passed in WP No. 18275 (W) of 2013 is virtually a non-speaking order, it has not decided any ratio or laid down any point of law so as to operate as a precedent and therefore, not binding on the Court. Thus, the learned Writ Court concluded that the action taken in the name of the Central Board of Trustees is not supportable from any standpoint and the of delegation of power made by the Central Board in favour of the certain classes of officials is bad and incompetent both for want of specific authority and being in excess of powers possessed by the Central Board.

4. Therefore, the learned writ Court held that the writ petitions filed under the name of the Central Board of Trustees must be held to be not maintainable from any point of view and were accordingly dismissed.

5. We find from the impugned order that the Learned Writ Court did not make any observation as to whether the Regional Provident Fund Commissioner (RPFC)/ Assistant Provident Fund Commissioner (APFC) could be permitted to file the writ petition and there is also no observation to the effect that the dismissal of the writ petition as not maintainable will not prevent the appropriate authority which in the opinion of the Learned Writ Court was entitled to sue or proceed with the litigation. In fact the learned writ Court does not indicate as which authority would be entitled to maintain the writ petition and we are to take an inference. Under normal circumstances, if the Court holds that the authority or person who challenges the order before the Court of Law is incompetent to do so, the Court will make an observation that the order rejecting the petition as not maintainable shall not stand in the way of the appropriate authority or person to challenge the order impugned. Thus, on a reading of the impugned order, we find that the Learned Writ Court appears to have completely foreclosed the avenues for the "appropriate authority" as in the opinion of the Learned Writ Court to continue the proceedings by substituting itself in the place of Central Board of Trustees.

6. What is important and relevant to note is that the proceeding are under the provisions of the Employees' Provident Fund and Miscellaneous Provisions Act, it is a social welfare legislation intended to protect the interest of the weaker sections of the society that the workers employed in the factories and other establishments and it was imperative for the Courts to give a purposive interpretation to the provisions contained in the Act keeping in view of the Directive Principles of State Policy embodied in Article 38 and 43 of the Constitution (Maharashtra State Co-operative Bank Limited Versus Provident Fund Commissioner (2009) 10 SCC 123).

7. Further the object of the Act is to provide security to workmen in organized industries in absence of any social welfare scheme prevalent in the country.

8. Bearing the above principles in mind, we are required to decide the correctness of the findings recorded by the Learned Writ Court qua maintainability of the writ petition, and shall deal with the other aspects after we decide on the maintainability of the writ petition.

9. Mr. Prasad, Learned Standing Counsel appearing for the appellant submitted that in the lead case, MAT 1141 of 2017, the challenge was to the order passed by the Learned Tribunal dated 17.08.2016 and the Learned Writ Court had dismissed the writ petition only on the ground of maintainability without going into the merits of the case.

9.1 It is submitted that the Learned Writ Court misunderstood the provisions of the Act and the scheme leading to an incorrect decision. It is submitted that Section 5C of the Act provides that the Board of Trustees constituted under Section 5A to a body corporate as specified in the notification constituting it. It has perpetual succession and common seal and established by the said name gives a power to sue and be sued in the name of the Central Board of Trustees which power was delegated by the Board by resolution passed in its meeting held on April 4, 1999 and subsequently the Central Provident Fund Commissioner informed the RPFCs by communication dated September 16, 2014 that the writ petition shall be filed in the name of the Central Board of Trustees, EPF through RPFC, APFC and law officers. It is submitted that the Central Board of Trustees has power to delegate its powers to its officials including the CPFC, RPFC, APFC under Section 5B(3) of the Act for efficient administration of the scheme. If it is held that the Central Board does not have power to take legal proceedings against any establishment it would frustrate the whole object as the expression "as it may consider necessary for the efficient administration of the scheme, pension scheme and insurance scheme" would get frustrated. Further it is submitted that the words "efficient administration of the scheme" means every activity relating to the fund inclusive of legal matters which includes the right to file the appeal in case the department is aggrieved by an order passed under Section 7I of the Act. It is further submitted that the Learned Writ Court ought to have seen funds includes both which have already been received or to be received. It is further submitted that identical issue was considered by another Learned Single Bench of this Court in WP NO. 9354 (W) of 2015 wherein it was held that Section 5A of the Act read with the provisions of the scheme confers enough power on the Central Board to maintain the writ application. The Court also noted the power to delegate under Section 5E of the Act. Therefore, it was held that the signing and affirming of a writ petition by APFC is perfectly legal and in the absence of proof that the APFC acted beyond its powers as the delegatee, the writ petition filed by the Central Board has held to be maintainable. In this regard, Mr. Prasad referred to the orders passed by the Hon'ble Division Bench on 15.06.2016 on MAT No. 93 of 2016, CAN 1888 of 2016 where the Hon'ble Division Bench entertained the appeal, allowed the same and set aside the order passed by the Learned Tribunal in adopting its own method in imposing damages opining that 10 % of the damages imposed would be

sufficient in the circumstances of the case. Though the Hon'ble Division Bench agreed with the reduction of the damages from 25 % to 10 %, it was held that, it cannot be 10% of the damages imposed by the Commissioner. Accordingly, the appeal filed by the department was allowed in part and liberty was granted to assess the damages as indicated i.e. at 10 % of the actual amount paid with delay under various accounts of the establishment. With regard to the correctness of the order in some of the writ petitions holding that the department is estopped from filing the writ petitions after having demanded and collected the damages as per the order passed by the Learned Tribunal, Mr. Prasad would contend that legality of a issue does not attract law of estoppel. "lis" until and unless adjudicated thoroughly and properly, remedy under the Writ jurisdiction cannot be thwarted or ignored as the writ jurisdiction provides for complete remedy to the aggrieved party. With regard to the jurisdiction of this Court under Article 226 of the Constitution while challenging the order passed by the Learned Tribunal, Mr. Prasad placed reliance on the decision of the Hon'ble Supreme Court in L. Chandrakumar Versus Union of India and Others, CHM 481/1980 dated 18.03.1997.

10. Further it is contended that the part of the assessed amount accepted by the department is without prejudice to the rights and contentions of the department and the right to challenge the order of the Learned Tribunal cannot be taken away. The Learned Standing Counsel referred to the decision of the Hon'ble Supreme Court in Central Board of Trustees Versus New Delhi Composite India Limited AIR 2018 SC 3682 and pointed out that the appeal filed by the Central Board of Trustees was entertained by the Hon'ble Supreme Court and allowed and the matter was remanded to the Division Bench of the High Court. With regard to the aspect as to whether the mens rea is an essential element for imposing damages under the Act, reliance was placed on the decision of the Hon'ble Supreme Court in Horticulture Experimentation Station Gonikoppal, Coorg. Versus The Regional Provident Fund Organization in Civil Appeal No. 2136 of 2012 dated February 23, 2022 wherein the Hon'ble Supreme Court held that for recovery of damages under Section 14B of the Act mens rea or actus reus is not an essential element for breach of statutory obligations/liabilities. Reliance was placed on the decision of the Hon'ble Supreme Court in Regional Provident Fund Commissioner Versus Hooghly Mills Company Limited (2012) 2 SCC 489 to explain the scope and ambit of the provisions of the Act.

11. With the above submissions, Learned Standing Counsel prayed for setting aside the order passed in the writ petition, holding the same to be maintainable and the decision should be directed to be taken on the merits of the matter. Mr. Anil Kumar Gupta and Mrs Aparna Banerjee, Learned Standing Counsels appearing for the other appellants adopted the submission made by the Mr. Prasad and prayed for allowing the appeals filed by them.

12. Mr. Soumya Majumdar Learned Senior Advocate appearing for the respondent / employers raised for consideration the following points:-

(i) Whether The Central Board of Trustees can challenge the order of the Learned Tribunal for recovery of higher amount, as an aggrieved person.

(ii) Whether the powers exercised by the Central Board of Trustees can encompass the amount which is yet to be vested in the Central Board.

13. It is submitted that "fund" has been defined under Section 2 (h) of the Act to mean the Provident Fund established under the scheme and a reading of Section 2(l) and Section 5 makes the position clear. It is submitted that the functions of the Central Board are specified in Section 5A (3), (4), (5), (6), and (9) of the Act. The power is to administer the fund vested in it in a manner as may be specified in the scheme. That apart, residuary power to perform functions, is not uncannalised but circumscribed or qualified by the control or guidance by the scheme. It is further submitted that the power to administer the "fund" vested in the Central Board can also be found under Section 5(1) A of the Act read with para 25 of the Scheme. The statutory powers conferred upon the CBT as contained in Section 5A (3), (4), (5), (6) and (9) read with Chapter III of the Scheme, (paras 19 to 25) does not clothe the Central Board with the power to sue. The right to manage or administer the "fund" vested with the Board of Trustees is not unqualified but it is controlled by the Scheme. Further it is submitted that Section 5C is only declaration and cannot be read as specified confirmation of power to sue. Further it is submitted that Section 5E read with Section 5A (3) and (4) makes it clear that the administration of the vested fund is to be done in the manner as specified in the Scheme and the performance of functions being "by or under any provision of the scheme". Therefore, the power and authority exercisable by the Central Board under Sections 5A (3), (4), (5), (6) and (9) which are to be juxtaposed to Chapter III of the Scheme and nothing beyond that. It is further submitted that reading any power or function of Central Board which is not prescribed in Section 5A (3) (4) (5) (6) and (9), 5D (3) and 5E; or in Chapter III of the scheme; will amount to legislation by Court. The manner of administration of the fund is specified in the Chapter VII of the EPF Scheme. Thus, the language used in the statutory provision being plain and unambiguous, no purposive construction is permissible. It is further submitted that the right to challenge the order of the Learned Tribunal is not one of the powers and duty of the Central Board as enumerated under the Act or in the scheme. It is really in the nature of process of recovery and an extension of the enquiry to determine dues. The CBDT cannot be a party to such ongoing proceedings in the midway. There are designated officers appointed by the Central Board whose statutorily enumerated powers and duties framed them to enquire, determine and recover the dues. Further, it is submitted that the Central Board apart from powers and functions in Chapter III of the Scheme also exercises certain quasi-judicial function as per Para 32B of the Scheme and none of the powers specifically permit right to sue as an inherent power of the Central Board towards administration of the fund vested in it. Further in order dated 19.04.2022 of the Hon'ble Division Bench expressed a prima facie view with reference to Schedule II of the Act corresponding to Section 5 (1B) of the Act.

Firstly Section 5(1B) is an enabling provision permitting matters to be provided as specified in Schedule II and secondly item 18 of schedule II is a residuary clause pertaining to providing a matter in the scheme which may be necessary for implementing the Scheme. This would mean that a power is to be specifically incorporated in the Scheme for the purpose and in the absence of such enumerated power there can be no inference as regards existence of power, far less the power to delegate.

14. It is further submitted that the department issued recovery notice in certain cases to recover the amount in terms of the orders of the Learned Tribunal and accepted the payment made by the employer and therefore the writ petitions by the Appellant are not maintainable. Reliance was placed on the decision in Jayanta Nath Majumdar Versus The State of West Bengal & Others, 1997 1 CHN 137 (DB) to submit that the department having demanded and recovered the amount payable by employer as per the order of the Learned Tribunal cannot maintain a writ petition thereafter.

15. With the above submissions, the Learned Senior Counsel prayed for sustaining the order passed by the Learned Single Bench.

16. We have elaborately heard the learned Advocates for the parties and carefully considered the submissions made and the materials placed on record.

17. Mr. Majumder, learned Senior Counsel appearing for the employers had raised two points for consideration namely, whether Central Board of Trustees can challenge an order passed by the learned Tribunal for recovery of a higher amount as an aggrieved person. The second point urged is whether the power exercised by the Central Board can encompass an amount which is yet to be vested with the Central Board. The two points which have been raised for consideration are interlinked and intertwined and hence dealt together. The submission is largely predicated on the language employed in Section 5 of the Act. Before we go into the said provision, it would be appropriate to refer to the relevant provisions of the Act and the relevant paragraphs of the Scheme.

18. The Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (the Act) was enacted to provide for institution of Provident Fund and deposit linked insurance fund for employees in factories and other establishments. It is not in dispute that the provisions of the Act are applicable to the respondent employers as they are all covered within the provision of Section 1(3) of the Act. Section 2(aa) defines "Authorized Officer" to mean the Central Provident Fund Commissioner, Additional Central Provident Fund Commissioner, Deputy Provident Fund Commissioner, Regional Provident Fund commissioner or such other officers as may be authorized by the Central Government, by notification in the Official Gazette.

18.1 Section 2(h) defines "fund" to mean the Provident Fund established under a Scheme.

18.2 Section 2(ia) defines "insurance fund" to mean deposit linked insurance fund established under Sub-Section (2) of Section 6C of the Act.

18.3 Section 2(ib) defines an "insurance scheme" to mean the employees' deposit linked insurance scheme framed under Sub-Section (1) of Section 6 of the Act.

18.4 Section 2(j) defines "Member" to mean a member of the fund.

18.5 Section 2(kA) defines "Pension Fund" to mean employees' pension fund established under Sub-Section 2 of Section 6A.

18.6 Section 2(kB) defines "Pension Scheme" to mean the employees' pension scheme framed under Sub-Section (1) of Section 6A.

18.7 Section 2(kb) defines "Recovery Officer" to mean any officer of the Central Government, State Government or the Board of Trustees constituted under Section 5A, who may be authorized by the Central Government, by notification in the Official Gazette to exercise the powers of a Recovery Officer under Act.

18.8 Section 2(l) defines "Scheme" to mean Employees' Provident Fund Scheme framed under Section 5 of the Act.

18.9 Section 5 deals with Employees' Provident Fund Schemes.

19. The argument of the learned Senior Counsel for the employers was largely based on the manner in which the Section 5 needs to be interpreted. Therefore, for easy reference, we quote the said provision hereunder:

5. Employees' Provident Fund Schemes.- (1) The Central Government may, by notification in the Official Gazette, frame a Scheme to be called the Employees' Provident Fund Scheme for the establishment of provident funds under this Act for employees or for any class of employees and specify the [establishments] or class of [establishments] to which the said Scheme shall apply [and there shall be established, as soon as may be after the framing of the Scheme, a Fund in accordance with the provisions of this Act and the Scheme.

(IA) The Fund shall vest in, and be administered by, the Central Board constituted under Section 5A.

(IB) subject to the provisions of this act, a scheme framed under sub-section (I) may provide for all or any of the matters specified in Schedule II.

(2) A Scheme framed under sub-section (1) may provide that nay of its provisions shall take effect either prospectively or retrospectively on such date as may be specified in this behalf in the scheme.

19.1 Sub-Section (1) of Section 5 states that the Central Government, may, by notification in the Official Gazette frame a scheme to be called the Employees' Provident Fund Scheme for the establishment of Provident Funds under the Act and soon after the framing of the scheme a fund shall be

established in accordance with the provision of the Act and the Scheme. Sub-Section 1(A) of Section 5 states that the fund shall vest in and be administered by Central Board constituted under Section 5A of the Act. Sub-Section (1B) states that subject to the provisions of the Act, a scheme framed under Sub-Section (1) of Section 5 may provide for or any of the matters specified in Schedule II. Sub-Section (2) of Section 5 gives power to make any of the provisions of the scheme to be either prospective or retrospective.

19.2 Section 5A deals with the Central Board. Sub-Section (1) of Section 5A states that the Central Government may, by notification in the Official Gazette, constitute with effect from such date as may be specified therein, a Board of Trustees in the territories to which the Act extends which shall be referred to as the Central Board consisting of the persons as Members as enumerated in Clauses (a) to (e) under Section 5A (1) of the Act. Sub-Section (3) of Section 5A states that the Central Board subject to the provision of Section 6A and Section 6C administer the fund vested in it in such manner as may be specified in the scheme. Sub-Section (4) states that the Central Board shall perform such functions as it may be required to perform by or under any of the provisions of the Scheme, the Pension Scheme and the Insurance Scheme.

19.3 Section 5AA deals with the Executive Committee. This committee is constituted by the Central Government by issuance of a notification in the Official Gazette, assists the Central Board in the performance of its functions. The Members of the Executive Committee are specified under Sub-Section (2) of Section 5AA of the Act.

19.4 Section 5B deals with the State Board which is constituted by the Central Government after consultation with the Government of any State and a State Board so constituted shall exercise such powers and perform such duties as the Central Government may assign to it from time to time. Section 5C of the Act is also of much relevance and therefore, quoted herein below:

5C. Board of Trustees to be body corporate.- Every board of Trustees constituted under Section 5A of Section 5B shall be a body corporate under the name specified in the notification constituting it, having perpetual succession and a common seal and shall by the said name sue and be sued.

20. In terms of the above provision every Board of Trustees, namely, the Central Board or the State Board as constituted under Section 5A and Section 5B respectively shall be a body corporate under the names specified in the notification constituting it, having perpetual succession and a common seal and by the said name sue and be sued.

20.1 Section 5D deals with the appointment of the officers. In terms of Sub-Section (1) of Section 5D the Central Government shall appoint a Central Board Provident Fund Commissioner who shall be General Executive Officer of the Central Board and shall be subject to the general control and superintendence of that Board. In terms of Sub-Section (3) of Section 5D, a Central Board may

appoint as many Additional Central Provident Fund Commissioners (ACPFC), Deputy Provident Fund Commissioners (DPFC), Regional Provident Fund Commissioners (RPFC), Assistant Provident Fund Commissioners (APFC), and such other officers and employees as it may consider necessary for the efficient administration of the scheme, Pension Scheme and Insurance Scheme.

20.2 Section 5DD states that the Acts and Proceedings of the Central Board or its Executive Committee or the State Board shall not be invalidated merely on account of existence of any vacancy in or any defect in its constitution.

20.3 Section 5E of the Act would also be relevant for the discussion and therefore, it is quoted:

5E. Delegation.- The Central Board may delegate to the Executive Committee or to the Chairman of the Board or to any of its officers and a State Board may delegate to its Chairman or to any of its officer, subject to such conditions and limitations, if any, as it may specify, such of its powers and functions under this Act as it may deem necessary for the efficient administration of the scheme the Pension Scheme and the Insurance Scheme.

20.4 The above provision empowers the Central Board to delegate to the Executive Committee or to the Chairman of the Board or to any of its officers and a State Board to delegate to its Chairman or to any of its officers subject to such condition and limitations, if any, as it may specify, such of its powers and functions under the Act as it may deem necessary for the efficient administration of the Scheme, the Pension Scheme and the Insurance Scheme.

20.5 Section 6 deals with the contribution and matters which may be provided for in Schemes.

20.6 Section 6A deals with the Employees' Pension Scheme and Section 6C deals with Employees' Deposit Linked Insurance Scheme.

20.7 Section 7A deals with determination and monies due from the employers. Sub-Section (1) of Section 7A states that the CPFC, ACPFC, DPFC, RPFC or APFC may by order, (a) in the case where any dispute arises regarding the applicability of the Act to an establishment decide such dispute and (b) determine the amount due from any employer under any provision of the Act, the Scheme or the Pension Scheme or the Insurance Scheme as the case may be and for any of the aforesaid purposes the said authority may conduct such enquiry as he may deem necessary. In terms of Sub-Section (2) of Section 7A, the officer conducting the enquiry under Sub-Section (1) shall have the same powers as vested in a Court under the Code of Civil Procedure, 1908.

20.8 Section 7B is the power of review of orders passed under Section 7A upon discovery of new and important matter or evidence. Section 7C deals with determination of escaped amount. In terms of Section 7D the Industrial Tribunal constituted by the Central Government under Section 7A (1) of the Industrial Disputes Act, 1947 shall be the Tribunal for all purposes of the EPF Act. Section

7A deals with the orders of the Tribunal. In terms of the Sub-Section (1) the Tribunal is empowered to confirm, modify or annul the order appealed against or may refer the case back to the authority which passed such orders with such direction as the Tribunal may deem fit for fresh adjudication or order as the case may be, after taking additional evidence, if necessary.

20.9 Section 8 of the Act deals with the mode of a recovery of monies due from employers and Section 8A deals with the recovery of monies by employers and contractors. Section 8B speaks of issue of certificate to the Recovery Officer (as defined in Section 2(kb)). In terms of said provision, where in amount is in arrears under Section 8 the authorized officer (as defined in Section 2aa) may issue to the Recovery Officer (as defined in Section 2(kb)) a certificate specifying the amount of arrears and the "recovery officer" on receipt of such certificate shall proceed to recover the amount specified therein from the establishment.

21. In terms of Section 8G the provisions of the Second and Third schedules to the Income Tax Act, 1961 and the Income Tax (Certificate Proceedings) Rules, 1962 shall apply with necessary modification as if the said provisions and the rules referred to the arrears of the amount mentioned in Section 8 of the EPF Act instead of the Income Tax Act.

21.1 Section 13(1) empowers the Central Government to appoint Inspectors for the purposes of the Act, the Scheme, the Pension Scheme or the Insurance Scheme and to define their jurisdiction. Section 14 deals with penalties. Section 14B of the Act deals with the power to recover damages. It states where an employer makes default in payment of any contribution to the fund, Pension Scheme or the Insurance Fund etc., the CPFC or such other officer as may be authorized by the Central Government by notification in the Official Gazette may recover from the employer by way of penalty such damages not exceeding the amount of arrears, as may be specified in the Scheme. Section 16 enumerates the establishments to which the EPF Act shall not apply.

21.2 Section 17(1) of the Act empowers the appropriate Government to exempt any establishment either prospectively or retrospectively from the operation of all or any of the provisions of the Scheme.

21.3 In terms of Section 18, no suit, prosecution or other legal proceedings shall lie against the Central Government, a State Government, the Presiding Officer of a Tribunal, any authority referred to in Section 7A an Inspector or any other person for anything which is in good faith done or intended to be done in pursuance of the Act, the Scheme, the Pension Scheme or the Insurance Scheme. Section 19 deals with delegation of powers and the same is quoted hereunder:

19. Delegation of powers.-The appropriate Government may direct any power or authority or jurisdiction exercisable by it under this Act, the Scheme, the Pension Scheme or the Insurance Scheme shall, in relation to such matters and subject to such conditions, if any, as may be specified in the direction, be exercisable

also-

(a) where the appropriate Government is the Central Government, by such officer or authority subordinate to the Central Government or by the State Government or by such officer or authority subordinate to the State Government, as may be specified in the notification; and

(b) where the appropriate Government is a State Government, by such officer or authority subordinate to the State Government as may be specified in the notification.

22. In terms of the above provision, the appropriate Government namely, the Central Government or the State Government may direct any power or authority or jurisdiction exercisable by it under the Act, Scheme, Pension Scheme or Insurance Scheme be exercisable by the authorities as mentioned in Clauses (a) and (b) in Section 19.

22.1 Section 20 empowers the Central Government to give such directions to the Central Board as it may think fit for efficient administration of the Act and when any such direction is given, the Central Board shall comply with such direction.

22.2 Section 21 is the Rule making power and Section 22 is the power to remove the difficulties. Schedule II as mentioned in Section 5 (1B) enumerates the matters for which provision may be made in a scheme and Clause 18 of Schedule II states that provision may be made in the Scheme for any other matter which is to be provided for in the Scheme or which may be necessary or proper for the purpose of implementing the scheme.

23. The Employees' Provident Fund Scheme, 1952 was published by the Ministry of Labour in SRO No. 1509 dated 02.09.1952. There have been several amendments of which we are not immediately concerned in these appeals. The scheme was formulated by the appropriate Government in exercise of its powers under Section 5 of the Act. The relevant paras of the scheme are noted hereinbelow:

24. Para 2(d) defines "Commissioner" to mean a Commissioner for Employees' Provident Fund appointed under Section 5D of the Act and includes a Deputy Provident Fund Commissioner and a Regional Provident Fund Commissioner. Chapter III of the Scheme deals with appointment and powers of Commissioner and other staff of Board of Trustees. Para 24A deals with the delegation of power by the Central Board which also falls in Chapter III of the Scheme. Sub-para (1) of Para 24A states that the Central Board may also by resolution empower its Chairman to sanction expenditure on any item, whether in the nature of capital expenditure or revenue expenditure, as it may deem necessary for the efficient administration of the fund, subject to financial provisions in the budget where such expenditure is beyond the limits upto which the Commissioner is authorized to sanction expenditure on any significant item. Para 25 deals with the power of the Central Government until the Central Board is constituted. It states that until

the Central Board is constituted, the Central Government shall administer the "fund" and may exercise any of the powers and discharge any of the functions of the Board. The proviso states that on constitution of the Central Board, the Central Government shall transfer amounts standing to the credit of the "fund" to the Central Board. Para 32A deals with recovery of damages for default in payment of any contribution and recovery can be made by a Central Provident Fund Commissioner or such other officer as may be authorized by the Central Government. Chapter VII of the scheme deals with the administration of the fund, accounts and audit. Para 78(1) empowers the Central Government to issue such directions to the State Governments, the Central Board or any other authority under the Act or scheme as it may consider necessary for the proper implementation of the scheme or for the purpose of removing any difficulty which may arise in the administration thereof including the difficulty in the matter of payment of accumulation in the fund to the members after they cease to be such members.

25. We have referred to the various provisions of the Act and the scheme so as to enable us to test the correctness of the submissions made on behalf of the employers. As mentioned earlier, sheet anchor of the argument of Mr. Majumdar firstly, lies in the manner in which Section 5 of the Act is to be interpreted. It is his argument that as soon as after framing a scheme, a fund in accordance with the provisions of the Act is established. The Central Board as constituted under Section 5A, can exercise power over the "fund" only upon the fund vesting with the Central Board as mentioned in Section 5(1A). It is his submission that the Act provides for a recovery mechanism. There are officers and staff of the department who exercise powers for determination of the contribution payable by an employer and recovery thereof after which the amount so recovered may get deposited in the "fund" and it is only thereafter the "fund" can be vested in the Central Board. To strengthen his argument, the definition of "fund" as defined under Section 2(h) has been referred to and it is submitted that the definition is clear that the fund shall mean the Provident Fund established under a scheme. It is submitted that the power to administer the fund vested with the Central Board is in terms of Section 5 (1A) of the Act read with Paragraph 25 of the Scheme. That the provision of the Central Board as specified in Sections 5A (3), (4), (5), (6) and (9) read with Chapter III of the Scheme (paras 19 to 25) does not empower the Central Board with the power to sue. Further, the right to manage or administer the "fund" vested in the Board of Trustees of the Central Board is not unqualified but is controlled by the scheme. Further, it is submitted that Section 5E read with Section 5AA (3) and (4) make it abundantly clear that the administration of the vested fund has to be done in the manner as specified in the Scheme and the performance of functions by or under the provisions of the scheme. It is the further argument of the learned Senior Counsel that the right to challenge the order of the learned Tribunal is not enumerated under the powers and duties of the Central Board under the Act or under the Scheme and the process of recovery is in pursuance of an enquiry, commenced by the authority

who will determine the dues and the Central Board cannot get midway in such proceedings. There are officers who have been specifically designated to carry out such duties who shall in terms of the provisions of the Act conduct an enquiry determine and recover the dues. To test the correctness of the above submission, we need to carefully and cautiously read Section 5 of the Act.

26. Section 5 deals with Employees' Provident Fund Schemes. There are two very significant limbs in Sub-section 1 of Section 5. The first of which is that the Central Government has to frame a scheme called the Employees' Provident Fund Scheme. This is for the establishment of Provident Funds under the Act for employees or for any class of employees and it shall also specify the establishments or class of establishments to which the said scheme shall apply. The second limb casts a duty upon the Central Government to establish a fund as soon as may be after framing the scheme. The fund so established shall vest in and be administered by the Central Board constituted under Section 5A in terms of Section 5 (1A) of the Act. Thus, Section 5(1) of the Act clearly stipulates that the Central Government shall first frame a scheme and soon after framing a scheme establish the fund. Therefore, for all purposes the scheme as framed by the Central Government in exercise of its power under Section 5(1) assumes supremacy in the chain of events. It is only after the scheme is framed under Section 5(1) of the Act by the Central Government a fund has to be established. This fund shall vest in and be administered by the Central Board constituted under Section 5A of the Act. While considering the said provision, we should take note of Section 5E of the Act which deals with the power of delegation. The said provision states that the Central Board may delegate to the Executive Committee or to the Chairman of the Board or to any of its officers and a State Board may delegate to its' Chairman or to any of his officers, subject to such conditions and limitations, such of its powers and functions under the Act as it may deem necessary for the efficient administration of the scheme, the pension scheme and the insurance scheme. Thus, the language in Section 5E of the Act is clear and manifest that the Central Board or the State Board may delegate its powers to the Executive Committee or to the Chairman of the Board or to any officers such of its powers and functions under the Act for the efficient administration of the scheme. At this juncture, we need to take note of the definition of "recovery officer" as defined under Section 2 (kb) of the Act. In terms of the said provision, recovery officer means any officer of the Central Government, State Government or the Board of Trustees constituted under Section 5A to exercise the powers of a recovery officer under the Act. Therefore, to state that the officers who are empowered to commence enquiry, determine and recover the dues to be in a water tight compartment to the exclusion of the Central Board is impermissible. This is so because the "recovery officer" can be an officer of the Central Government or an officer of the State Government or the Board of Trustees constituted under Section 5A of the Act. Therefore, the supremacy of the Central Board stands preserved. The principle object of the Act is to ensure efficient administration of the scheme and not efficient administration of the fund.

Therefore, if the Central Board can be a "recovery officer" and if it exercises its power of delegation under Section 5E of the Act to any other officer to exercise the powers and functions under the Act for the efficient administration of the scheme, it is deemed that the power and functions exercisable and exercised by those officers as a delegate are the powers and duties exercised or exercisable by the Central Board. Once we steer clear of this position, the artificial barrier sought to be created by the employers before us stands demolished. As mentioned earlier, in the hierarchy, it is a "scheme" which is first notified and it is thereafter the "fund" established. Thus, if the power has been granted to the Central Board to efficiently administer the scheme, it goes without saying that in the process of efficiently administering the scheme, the fund has to be appropriately and efficiently handled in the manner as provided for under the Act. Bearing in mind, this interpretation, if we examine the provisions of Section 5A, the position becomes clearer. Sub-Section 3 of Section 5A states that the Central Board subject to the provisions of 6A and 6C administer the fund vested in it and in such manner as may be specified in the scheme. The argument that the "fund" does not vest with the Central Board during the process of enquiry, determination and recovery of dues is an argument which is stated to be rejected. When the Central Board can exercise its power as a "recovery officer", it goes without saying that if the Central Board is empowered to delegate such powers in terms of Section 5E of the Act and the delegated officer commences the enquiry determines the dues and recovers, the delegatee it undoubtedly exercising the powers of a "recovery officer" which will include a Central Board. Therefore, the powers are inextricably linked and the Central Board cannot be divested of its jurisdiction to state that the Central Board can do nothing until the officer commences the enquiry determines the dues and recovers the same to be deposited to the fund. If such interpretation is to be given then purpose of the Act would stand defeated. Thus, when the Central Board has enough and sufficient powers to efficiently administer the scheme, it goes without saying that in the process of administering the scheme efficiently, it would encompass all powers to deploy the fund for efficient and proper administration of the scheme. Thus, in the absence of the scheme the fund loses its significance as it is the scheme which needs to be administered and for the purpose of administering the scheme the fund becomes relevant. Precisely for reason no time line has been fixed/stipulated between the notification of a scheme and establishment of a fund as Section 5(1) of the Act uses the expression "as soon as may be" after framing the scheme. The fund is established not only in accordance with the provisions of the Act but also in accordance with the provisions of the schemes. Therefore, on and after the fund being established, it shall vest with the Board simultaneously and co-terminus with the date of establishment of the fund qua the notification of the scheme. Thus, the interpretation made on behalf of the employers if to be accepted, it will bring in an artificial distinction which is not provided for under the Act.

27. The Learned Single Bench while dismissing the writ petitions on the ground

that they are not maintainable was largely guided by para 24 A of the scheme which in our view is not relevant for the purpose of the cases on hand as it speaks about the delegation of power by the Central Board for sanction of expenditure and matters connected there with. The power of delegation which is relevant for the purposes of the cases on hand in Section 5E of the Act which empowers the Central Board to delegate its powers for efficient administration of the scheme. In the backdrop of what we have observed above, if we examine the various Sub-sections of Section 5A, the position becomes clearer. Sub-Section 3 of Section 5A states that the Central Board shall subject to the provisions of Section 6A and Section 6C administer the fund vested in it in such a manner as may be specified in the scheme. Sub-Section 4 states that the Central Board shall perform such other functions as may be required to perform by or under the provisions of the scheme, the pension scheme and the insurance scheme. Sub-Section 5 states that the Central Board shall maintain proper accounts of its income and expenditure in such form and in such manner as the Central Government may after consultation with the Comptroller and Auditor General of India (CAG), specify in the scheme, Sub-Section 6 states that the accounts of the Central Board shall be audited by the CAG and Sub-Section 9 states that it is the duty of the Central Board to submit also to the Central Government an annual report of its work and activities and the Central Government shall place the annual report and the audited accounts together with the report of the Comptroller and Auditor General of India and the comments of the Central Board there on before the House of Parliament. This provision read along with the Chapter III of the scheme clearly shows that the Central Board is the highest and supreme authority under the scheme of the Act and for the purpose of efficiently administering the scheme and this can be done by utilizing the funds which are recoverable from the employers for which machinery has been created under the Act. In terms of Section 2 (kb), the Central Board can also exercise its powers as a "recovery officer". Therefore, for all purposes unless and until the Central Board is empowered to administer the scheme in an efficient manner which cannot be done without the fund being in operation, there can be no distinction or artificial differentiation being created as argued before us on behalf of the employers. If the Central Board can exercise its powers as a "recovery officer" in terms of Section 2(kb) read with Section 5C will make the position clearer.

28. Section 5C states that every Board of Trustees constituted under Section 5A or Section 5B namely the Central Board or the State Board respectively shall be a body corporate having perpetual succession and a common seal and shall by the said name sue and be sued. Therefore, we have no hesitation to hold that the Central Board having been empowered to delegate its powers to the various officers including the RPFC/APFC can maintain an action for recovery in its own name as it is a body corporate having perpetual seal and succession with a right to sue or be sued. This conclusion of us stands fortified if we take note of Section 5D(3) of the Act which empowers the Central Board to appoint as many as ACPFs, DPFCs, RPFCs, APFCs and such other officers and employees as it may

consider necessary for the efficient administration of the scheme, pension scheme and the insurance scheme. The said provision read along with Section 5E of the Act makes the position lucid empowering the Central Board to exercise all powers under the Act including that of conducting enquiry, determining the dues and recovering the same. As could be seen from Section 5A of the Act, the Central Board is multi-member body consisting of members appointed by the Central Government member represented the State Governments, representatives of the employers, representatives of the employees. It is beyond one's comprehension that this apex body cannot exercise the powers which are exercisable by the officers subordinate (and appointed) to it or in other words officers to whom the powers of the Central Board have been delegated. If a power has been delegated, it goes without saying that such authority, who delegates the powers is empowered to exercise the power by superseding such delegation. Any other interpretation would frustrate the very object of delegation. The resolution of the Central Board dated April 4, 1999 is to the said effect. Admittedly there is no challenge to the said resolution by the employers, and the interpretation given by the learned writ court to such resolution is not tenable. Such delegation cannot be held to be bad of incompetent. Delegation is defined in Black's Law Dictionary as "the act of entrusting another with authority by empowering another to act as an agent or representative." It has been held in Gwalior Rayon Silk Manufacturing (Wing) Company Limited Versus The Assistant Commissioner of Sales Tax and Others (1974) 4 SCC 98 as follows:

.....

Delegation is not about the complete handing over or transference of a power from one person or body of person to another. Delegation may be defined as the entrusting, by a person or body of persons, of the exercise of a power residing in that person or body of persons, to another person or body of persons, with complete power of revocation or amendment remaining in the grantor or delegator. It is important to grasp the implications of this, for, much confusion of thought has unfortunately resulted from assuming that delegation involves or may involve, the complete abdication or abrogation of a power. This is precluded by the definition. Delegation often involves the granting of discretionary authority to another, but such authority is purely derivative. The ultimate power always remains in the delegator and is never renounced.

29. As noted above the Scheme and the fund as expressed in Section 5(1) are inextricable linked, one cannot be divested of the other, one cannot function without the other, that being the reason, Section 5(1) states that the Central Government shall by notification frame a scheme and as soon as may be establish a fund. "As soon as may be" shall mean immediately at or shortly after the time. It is not possible to set down any arbitrary time limit. The Hon'ble Supreme Court in Ujagar Singh Versus State of Punjab (1952) SCR 756 while construing the words "as soon as may be" in Section 7 of the Preventive Detention Act, 4 of 1950 held that these words mean reasonable dispatch and

what is reasonable dispatch depends on facts of each case.

30. The EPF Act came into force with effect from 4th March, 1952, The Employees Provident Fund Scheme framed under Section 5 of the Act was introduced in stages and came into force in its entirety by 1st November, 1952. The Employees Provident Fund is a statutory benefit payable to employees, the administration of the fund is by the Central Board established in accordance with Section 5A of the Act. As mentioned the Employees Provident Fund has been established in accordance with the provisions of the Act and applicable to every industry as defined under the Section 2(i) of the Act as specified in Schedule I of the Act and includes other industry added to the schedule by notification under Section 4 of the Act. Thus, if the provisions of the Act are read in its entirety, it is clear that the Employees Provident Fund is a scheme which provides for accumulation of retirement benefits. The employer and an employee are required to make the contribution as stipulated. To put it in more simpler terms the provident fund is a retirement savings scheme made available to salaried employees, which has the backing of the Government and interest is paid. This fund is administered by the Employees Provident Fund Organization. Why is it called an organization? The answer is simple as it is an statutory body under the Ministry of Labour and Employment, Government of India which is responsible for administering the provident fund. Thus, no exception could have been taken by the Learned Writ Court to the appellant mentioning themselves to be an "organization".

31. Thus, we are clear in our mind, that all Sub-Sections occurring in Section 5A have to be read together, more importantly Sub-Section (3) of Section 5A, and if done we have to necessarily hold that the Learned Writ Court erred in making an artificial distinction and holding that there is no power with the Central Board unless the "fund" is "vested". The Learned Writ Court has not given any opinion, as to when the "fund" gets vested with the Central Board. Hence we hold that the findings of the Learned Single Bench to be seriously flawed. Our conclusion is fortified if we note Section 5D of the Act, which deals with appointment of officers. Sub-Section (3) of Section 5D states:

32. The Central Board may appoint, subject to the maximum scale of pay, as may be specified in the Scheme, as many Additional Central Provident Fund Commissioners, Deputy Provident Fund Commissioners, Regional Provident Fund Commissioner, Assistant Provident Fund Commissioners and such other officers and employees as it may consider necessary for the efficient administration of the Scheme, the Pension Scheme and the Insurance Scheme.

33. Thus, the Officers/employees are to be appointed by the Central Board for the efficient administration of the scheme, it is impermissible, incomprehensible and erroneous to hold that the Central Board, which appoints those officers to carry out the function and duties under Section 7A or Section 14B cannot by itself maintain a challenge to the order of the Learned Tribunal, before this Court. The order passed by the Learned Writ Court has "rocked the boat" by giving an

interpretation which is wholly unsustainable, ignoring the scheme of the Act and well settled rules of statutory interpretation. The Learned Single Bench, by creating an artificial distinction between the "scheme" and the "funds", erroneously concluded that unless the amounts are recovered from the employer it would not accrue to the "fund". There is a statutory duty for the employer to comply with the terms of the scheme, which requires them to put in the contributions within the time stipulated namely their contribution as well as the contribution recovered from the employees' salary/ wages. If the scheme provides for the quantum to be deposited, there can be no escape from the liability, unless by judicial interference. This is precisely the challenge made by the appellant in the writ petition questioning the correctness of the decision of the learned tribunal.

34. If on facts it is found that the respondent employers have deducted the employees' contribution from their monthly salary and not remitted to the department along with their proportionate contribution, in time, as provided for under the scheme, it falls nothing short of misappropriation of the monies recovered from the salary of the employees. However, these are on the merits of the matter, as the Learned Writ Court has not considered it, thought fit to dismiss the writ petitions on the question of maintainability, we refrain from expressing any opinion in this regard.

35. On 19.04.2022, this Court expressed a prima facie view that on a cursory perusal of the various clauses in Schedule II to the Act, prima facie found clause 18 of Schedule II to be very widely couched and the Scheme framed under Section 5(1) will cover any other matter, which is to be provided for in the Scheme or which may be necessary or proper for the purpose of implementing the Scheme. Mr. Mazumdar would argue that Section 5(1B) is an enabling provision as specified in Schedule II, item 18 of Schedule II is a residuary clause, in the absence of any such enumerated power, there can be no inference as regards existence of power, much less, a power to delegate. This prima facie view recorded by us, requires no adjudication in the light of the conclusion arrived at above. In any event, it would be necessary to mention that Sub-Section (1B) of Section 5, states that subject to the provisions of the Act, a Scheme framed under Sub-Section (1) of Section 5 may provide for all or any other matters specified in Schedule II. This schedule enumerates matters for which provision may be made in a scheme, and Clause 18 of Schedule II exemplifies the scope, reach and ambit of a scheme to be framed under Section 5(1) read with Sub-Section (1B) and Schedule II. This in our opinion would amplify the existence of power, which is delegatable.

36. Thus, if the contention on behalf of the employers that there is a distinction between vesting of a fund with the Central Board and that such fund can stand vested only after the recovery mechanism is initiated, enquiry conducted, amount determined and recovered is to be accepted then the scheme of the Act would stand defeated rendering it unworkable and consequently work prejudice

to the employees for whose benefit the Act was enacted. The argument on behalf of the employers should necessarily fail, if tested on the anvil of purposive interpretation/construction. If the argument is to be accepted, it would clearly defeat the purposes of the Act. The Court is required to examine the provisions of the Act, the schedule and the scheme as a whole and if done so, the question would be what is the intention of the provisions of the Act and any interpretation to be given contrary to the provisions of the Act has to be rejected. The settled legal principle is that to ascertain the legislative purpose and intent the Act has to be read as a whole and if done so, as noted, the fulcrum of the implementation of the Act rests in the scheme and the fund supports the implementation of the scheme which scheme is to be efficiently administered by the Central Board which has got power to delegate its functions.

37. In *Prakash Cotton Mills Private Limited Versus State of Bombay* (1957) 2 LLJ 490 (Bom) it was held that no labour legislation, no social legislation, no economic legislation, can be considered by a Court without applying the principles of social justice in interpreting the provisions of these laws. It was pointed out that social justice is an objective which is embodied and enshrined in our Constitution, it would indeed be startling for anyone to suggest that the Court should shut its eyes to social justice and consider and interpret the law as if our country had not pledged itself to bringing about social justice. This decision of Chagla CJ was endorsed by Hon'ble Supreme Court in *NK Jain Versus CK Shah* (1991) 2 SCC 495 and in *Regional Provident Fund Commissioner Versus Hooghly Mills Company Limited* (2012) 2 SCC 489.

38. Unfortunately, the Learned Single Bench failed to take note of the well settled principle of the interpretation of a social welfare legislation by non-suited the appellant on a technical ground which we find to be unsustainable. We also note the decision in *Indore Composite Private Limited* wherein the Hon'ble Supreme Court entertained an appeal filed by the Central Board of Trustees allowed the same, set aside the order passed by the Division Bench of the High Court and remanded the matter for a fresh decision.

39. An argument was advanced by the Learned Senior Counsel for the employers that until and unless, the amount payable is determined and recovered and deposited in the fund, and the fund gets vested with the Central Board, the Board is denuded of any jurisdiction to intervene in the recovery process which in fact is continuation of the enquiry commenced by the officer under the Act. This submission has been dealt by us and we have held that the Central Board for all purposes can exercise powers of "recovery officer" and the artificial distinction sought to be canvassed is liable to be rejected. The subsidiary argument is that the Central Board at no earlier point of time had approached the Tribunal and they cannot be stated to be aggrieved person before this Court. As noted, the power of recovery rests with the Central Board and the Central Board was empowered to delegate such a power which the delegates have exercised and the dues have been determined and recovery proceedings have been initiated.

After which the employer challenges the order of determination and consequential recovery by approaching the Learned Tribunal and the Learned Tribunal grants partial relief to the employers. Hitherto, the RPFCs/APFCs having been filing the writ petition challenging the orders of the Tribunal. On account of an order passed in a writ petition in WP No.188275 (W) of 2013 dated 05.06.2014 the appellants have filed the writ petition in the name of the Central Board of Trustees represented by the RPFC. The Learned Writ Court was of the view that the RPFC in his individual capacity cannot prefer the writ application against the order passed by the Learned Tribunal and this will not prevent the competent authority to prefer the appeals/writ petitions against the said order. It would have been open to the appellant to have submitted before the Learned Writ Court that the RPFC exercises its power as a delegatee of the Central Board. However without examining the matter in depth they have chosen to file the present writ petitions by describing the writ petitioner as the Central Board of Trustees represented by its RPFC. In fact, another Learned Single bench of this Court in WP NO. 15910 (W) of 2015 dated 30.11.2015, taking note of Section 5A and 5C held that the writ petition at the instance of the Central Board was maintainable. In fact, it is not in as many words as we have observed, the Learned Writ Court had rightly held that the Central Board can maintain a challenge against the order of the Learned Tribunal.

40. The Learned Writ Court in the impugned order had commented upon the use of the word "organisation" while describing the appellant. The dictionary meaning of "organization" would state that it is an organized group of people with a particular purpose such as business or the Government department. As a structure, organization as a network of internal authority and responsibility and relationships. It is a framework of relationships of persons operating at various levels to accomplish common objectives. An organizational structure is a systematic combination of people, functions and physical facilities. The four common elements of organization include common purpose, coordinated effort, division of labour and hierarchy of authority. Therefore, we have no hesitation to hold that the appellant is undoubtedly an "organization" and to describe themselves as the Employees Provident Fund Organisation cannot be faulted, as it is an organized structured formed with an object. Therefore, the observations made by the Learned Single Bench in this regard needs to be completely eschewed.

41. In the light of the above, we hold that the writ petitions filed at the instance of the Central Board of Trustees of the Employees Provident Fund Organisation represented by the RPFC/APFC to be maintainable. That apart, had the writ petitioners been filed by the RPFC/APFC as a delegate of the Central Board is also held to be maintainable. The settled legal principle being form over substance should be preferred and reckoned.

42. The Learned Senior Counsel appearing for the employers submitted that most of the respondent employers have complied with the orders passed by the

Learned Tribunal by paying the amount so determined and demanded and after full satisfaction of the amount so payable, the appellant could not have filed the writ petitions. In this regard, reliance was placed on the decision of the Hon'ble Division Bench of this Court in 1991 1 CHM 137 (Del).

43. Firstly, at no point of time, the appellant had given up the right to recover the full dues as computed and demanded by them. The anxiety to receive the amount paid by the employer is backed by the object for which the EPF Act and scheme have been formulated. Under the provisions of the Income Tax Act, 1961 even when orders have been appealed to the First Appellate Authority or to the Appellate Tribunal, the assessing officer is required to issue a demand by giving effect to the order passed by the First Appellate Authority or the Appellate Tribunal and in many such cases the assessee's themselves having complied with the giving effect to order and thereafter have challenged the orders passed by the First Appellate Authority before the Tribunal or the orders passed by the Tribunal before this Court. Equally is the case of the appeals filed by the department. This is more so because time limits have been fixed for recovery. Therefore, there can be no estoppel against the department from pursuing its rights to enforce the demand in its entirety. The department is entitled to challenge the order of the Tribunal notwithstanding the fact the jurisdictional Provident Fund Commissioner has recovered the amount in terms of the orders passed by the tribunal. There is a duty cast upon the department to ensure that all steps are taken to recover the entire amount as determined by them and for which purpose they are entitled to take the matter to the logical end. Therefore, the argument on behalf of the employers that the challenge to the orders of the tribunal is not maintainable has to be necessarily fail and consequently the orders passed by the Learned Single Bench dismissing the writ petition on the said ground deserve to be set aside. That apart, no person should be left remediless. In terms of the provisions of the Act, no appeal or revisional remedy has been provided as against the order passed by the Learned Tribunal. In such circumstances, the only remedy available is under Article 226/227 of the Constitution of India. Such a remedy cannot be thwarted and the Learned Writ Court is empowered to examine as to whether the order passed by the Learned Tribunal suffers from any perversity or there is any error in the decision making process, whether reasons were assigned, where the principles of natural justice have been followed and above all did the Learned Tribunal keep in mind the object and intent of the provisions of the EPF Act. The Learned Writ Court is entitled to examine as to whether the Learned Tribunal had committed any error in granting certain reliefs to the employers without bearing in mind that the provisions of the EPF Act, a social welfare legislation intended to protect the interest of the weaker sections of the society namely the workers employed in factories and other establishments. Therefore, we hold that the writ petitions were maintainable notwithstanding the fact that the RPFC/APFC had made partial recovery of the dues/damages payable by the employers based on the orders passed by the Learned Tribunal.

44. For all the above reasons, the appeals are allowed and the order passed in the writ petitions are set aside and the writ petitions at the instance of the Central Board of Trustees of the Employees' Provident Fund represented by the RPFC/APFC are maintainable and also writ petitions filed by the RPFC/APFC as a delegate of the Central Board are also maintainable. Consequently the writ petitions stand restored to file of the Learned Single Bench to be heard and decided on merits and accordance with law. The respondent employers are directed to file their affidavit-in-opposition to the writ petitions raising their contentions on the merits of the matter except the ground of the maintainability which has been decided in favour of the appellant and such affidavit-in-opposition be filed within eight weeks from the date of receipt of the server copy of this order after serving copies thereof on the appellant and the appellants are granted four weeks time there from to file reply if any after which the Registry is directed to list the writ petitions for hearing before the appropriate Learned Single Bench. No Costs.