

**(2012) 11 GUJ CK 0014**  
**In the Gujarat High Court**

**Case No :** Special Civil Appeal No's. 1401, 2074 and 3431 of 2000

Deepak Nitrite Ltd.

APPELLANT

Vs

Regional Provident Fund Commissioner and Another

RESPONDENT

**Date of Decision :** 03-11-2012

**Acts Referred:**

Constitution of India, 1950 — Article 14, 226  
Criminal Procedure Code, 1973 (CrPC) — Section 195  
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 1, 14B, 17, 2(b), 3  
Factories Act, 1948 — Section 7  
Penal Code, 1860 (IPC) — Section 193, 196, 228

**Citation :** (2013) 1 GLR 352 : (2013) LabIC 935

**Hon'ble Judges :** S.R. Brahmbhatt, J

**Bench :** Single Bench

**Advocate :** Bijal Chhatrapati, A.M. Hava with Siddharth Sinha for Singhi and Buch Asso. in Special Civil Appeal No. 2074 of 2000, Ms. Jirga Jhaveri in Special Civil application No. 1401 of 2000 and Kunal Maik for Trivedi and Gupta in Special Civil application No. 3431 of 2000, for the Appellant; Nirav Majmudar in Special Civil Application No. 3431 of 2000, in Special Civil Appeal No. 2074 of 2000 and for Respondent Nos. 3 and 4 in Special Civil Application No. 1401 of 2000, A.M. Hava with Siddharth Sinha for Singhi and Buch Assoc. for Respondent Nos. 1 and 2 in Special Civil Application No. 1401 of 2000, for the Respondent

**Final Decision :** Allowed

## Judgement

S.R. Brahmbhatt, J.—Heard learned Advocates for the parties. Special Civil Application No. 2074 of 2000 and Special Civil Application No. 1401 of 2000 have been inter alia containing the challenge to the orders dated 25-8-1999 and 21-10-1999 respectively passed by the authorities under Sec. 7A as well as Sec. 7D of the Employees' Provident Funds and Misc. Provisions Act, 1952 (hereinafter referred to as "the Act" for short), holding and confirming that the establishment i.e. petitioner in Special Civil Application No. 2074 of 2000 is liable to make contribution equivalent to the cash value of food concession being

available to the employees in the canteen run by M/s. Deepak Nitrite Limited Credit Co-operative and Multi-purpose Co-operative Society (Society).

The petitioner of Special Civil Application No. 1401 of 2000 are the employees and office-bearers of Union and by this petition, they have challenged, as stated hereinabove, the aforesaid two orders and in addition thereto, prayed that the employer be restrained from withdrawing its subsidized food facilities on account of aforesaid two impugned orders passed by the authorities under the provisions of the Act, which have been challenged by both the petitioners in these petitions, and hence, they were heard together and it being disposed of by this common judgment and order.

The Special Civil Application No. 3431 of 2000 is preferred by Lakhanpal National Ltd. challenging the order dated 27-9-1999 passed by the respondent Commissioner and also the order dated 31-1-2000 passed by the P.F. appellate Authority in appeal, which was preferred by the petitioner against the order dated 27-9-1999 and by said impugned orders, the petitioner-Company was directed to deposit P.F. contribution on the amount of food concession as alleged and claimed by the respondent authority, paid by the petitioner-Company to the employees.

2. Facts in brief leading to filing these three petitions as could be culled out from the respective memos deserve to be set out as under:

The petitioner in Special Civil Application No. 2074 of 2000 is an employer establishment governed by the provisions of Act and has been allotted P.F. Code No. 5278. The manufacturing activities are carried out in three shifts in the establishment. The petitioner wanted to provide canteen facility for its employees, staff members and guests visiting the establishment. The said facility was, therefore, made available to the workmen/establishment and the said canteen was run by Co-operative Society known as M/s. Deepak Nitrite Limited Credit Co-operative Society. The food items were subsidized by the petitioner as a welfare measure as the factory was situated at a distance of about 25 kms. from Vadodara city. The establishment received notice under Sec. 7A of the Act dated 12-5-1994 for determining the question as to non-deduction of P.F. contribution on cash value of food concession and some other aspects. This notice ensued detailed inquiry. The establishment defended its stand and contended that the canteen facilities and subsidized food items or subsidy in the food items being provided to the employees, staff members and guests, may not be treated as the part of dearness allowance and be made exigible cash value on any food concession allowed to the employee i.e. the provisions of explanation (1) under Sec. 6 of the P.F. Act. The reliance was also placed upon the definition contained in Sec. 2(b) "basic wage" and contended that there specific explanation on such items from the purview of "basic wages". It is required to be noted at this stage that the Area Enforcement Officer, Sub-regional Office, Baroda vide his report dated 21-6-1999 also unequivocally opined that the coupons given to the employees cannot form part of the wages, and therefore,

there exists no liability for P.F. deduction. The Competent Authority after elaborate discussion on the contentions and grounds, came to the conclusion that the activities of offering food of subsidized rate to the staff and employees, would squarely attract the provision contained in explanation (1) to Sec. 6, and hence, liable to be subject-matter of P.F. deduction and ordered accordingly. This order is dated 25-8-1999. This order was carried into Appeal by the establishment and the appellate Authority also vide its order dated 21-10-1991 confirmed the order passed by Competent Authority and dismissed the appeal. Hence, present petition is preferred under Art. 226 of the Constitution of India.

The petition being Special Civil Application No. 1401 of 2000 is preferred by the employees-Union working in the establishment of the petitioner of Special Civil Application No. 2074 of 2000 and it contained challenge to both the orders namely order dated 25-8-1999 as well as order dated 21-10-1999 passed by the competent authority as well as appellate Authority respectively and in addition thereto it contained specific prayer against the establishment-employer and has sought direction in the form of writ of mandamus or any other writ, order or direction, restraining the employer-establishment from withdrawing its subsidized food facilities on account of aforesaid two impugned orders passed by the authorities under the provisions of the Act.

As it is stated hereinabove, as all the matters involve same question of law and as all the Counsels appearing for the parties have jointly argued the matters and submitted their submissions jointly, these petitions are being disposed of by this common judgment and order.

3. Learned Advocate appearing for employer-establishment in Special Civil Application No. 2074 of 2000, vehemently argued the matter and at the end of arguments, submitted written submissions also, which needs to be reproduced verbatim as under so as to appreciate its purport:

6. Sections 7A(1)(a) and (b) of the E.P.F. Act, under which the impugned demand has been raised requires, that the Provident Fund Authority:

(a) in a case where a dispute arises regarding the applicability of this Act to an establishment, decide such dispute; and

(b) determine the amount due from any employer under any provision of this Act, the Scheme or the (Pension) Scheme or the Insurance Scheme, as the case may be,

and for any of the aforesaid purposes may conduct such inquiry as he may deem necessary.

The pre-requisite, therefore, for an order under Sec. 7A(1) of the E.P.F. Act is determination of the amount due, from any employer. Neither the Regional Provident Fund Commissioner nor the appellate Authority, have determined the amount due from the employer. As is brought out hereinafter, in the facts of the present case, no such determination is even possible. The impugned demand, is

therefore, bad in law and deserves to be quashed and set aside, on this ground alone. (Please See: The Newspaper Publishers Pvt. Ltd. v. Regional Provident Fund Commissioner, 1972 Lab. IC 1392, Jwala Prasad Sikaria & Co. v. Regional Provident Fund Commissioner, AIR 1974 Ori 267).

7. The petitioner and the Union of the petitioner's employees had entered into an agreement on 6-8-1992 under the provisions of the Industrial Disputes Act, 1947. An award came to be made in terms of the said agreement, by the Hon'ble Industrial Tribunal in Reference No. I.T. No. 10 of 1992 on 14-8-1992 (Annexure-A @ page 128/128A). The said settlement agreement expressly provided the following, at Paragraph 24.03 thereof:

It is agreed that except basic pay, fixed dearness allowance and variable dearness allowance no other allowances shall be taken into consideration for the purpose of computing any benefits such as provident fund, bonus, gratuity, overtime, etc. as in vogue at present or as may be introduced/or made applicable in future.

Further, Paragraph 24.17 thereof, reads thus:

This settlement is based on the total financial burden per workman, broken into various allowances. Therefore, this settlement is the package deal of all the demands raised and/or referred to the Tribunal.

Accordingly, in view of the agreement between the employer and the employees, not to include anything other than basic pay, fixed dearness allowance and variable dearness allowance for the purpose of computing, inter alia, provident fund, no demand for provident fund contribution can be raised in respect to any so-called cash value of food concession. Furthermore, when the settlement is a package deal, no further contributions or payments are contemplated. Associated Cement Co. Ltd. Vs. R.M. Gandhi, Regional Provident Fund Commissioner and Others, , The Employees State Insurance Corporation Vs. E.I.D. Parry (India) Ltd., , Burmah Shell Oil Storage and Distributing Company of India Ltd. Vs. The Regional Provident Fund Commissioner Delhi and Others, .

8. The so-called cash value of food concession is not part of "basic wages" and no provident fund contribution is contemplated therein. The definition of "basic wages" at Sec. 2(b) of the E.P.F. Act reads thus:

(b) basic wages means all emoluments which are earned by an employee while on duty or (on leave or on holidays with wages in either case) in accordance with the terms of the contract of employment and which are paid or payable in cash to him, but does not include -

(i) the cash value of any food concession;

(ii) any clearness allowance (that is to say, all cash payments by whatever name called paid to an employee on account of a rise in the cost of living), house rent allowance, overtime allowance, bonus commission or any other similar allowance

payable to the employee in respect of his employment or of work done in such employment;

(iii) any presents made by the employer.

The cash value of food concession is expressly excluded from the definition of basic wages.

9. In the instant case, the co-operative society of the petitioner's employees runs a canteen which provides tea, snacks, etc. to not only the employees, but also senior management cadre staff but visitors and guests to the premises. The prices of such food items are concessional. The losses incurred by the co-operative society are borne by the petitioner. This facility is a welfare measure, voluntarily undertaken and which can be discontinued at any time, at the petitioner's discretion. The employees are free to use or not to use the facilities of the canteen, as also, to free to avail such amount of food, as they may choose. The employees are free to buy coupons depending upon their requirements. Consequently, the concession in the price of the food items is not uniform for all the employees. There is no cash payment or benefit to the employees, nor are the food items allow to be taken outside the company premises. The employees on leave would not avail on the canteen facility. The consumption pattern of the employees also changes, depending upon their shifts. No allowance is paid to an employee in lieu of the canteen facility. It is, therefore, not possible to work out the value of the food items supplied to any individual employee, inter alia, because an employee may, after purchasing a coupon, exchange the same or not utilize the same. Moreover, it is not possible to assess the value of food concession, allegedly available to each employee, for the reason that there can be no arithmetical calculation of the difference between retail price of a food item and its costs, since (i) the food items are available not only to the employees, but to the management cadre staff and visitors and guests, (ii) the losses incurred by the co-operative society would be as a result of, not only the price difference between the retail price of the food item and its costs, but incurring of other expenses towards infrastructure creation, infrastructure maintenance, canteen staff, electricity and other fuels, etc. This being so, it would be impossible to identify any specific quantum of food concession made available to a particular employee, for the purpose of considering P.F. contribution thereupon. Also, the aforesaid figures would fluctuate, day-to-day. No computation is, therefore, possible for the purpose of arriving at any alleged or possible P.F. contribution, as contemplated under Sec. 7A of the E.P.F. Act with the result that the recovery from the wages of an employee, of their supposed share of P.F. contribution, would not be possible.

10. Basic wages means all emoluments which are "earned" by an employee while on duty or on leave or on holidays, with wages in either case and which are paid or payable in cash. An employee does not earn anything by availability of food at a concessional rate. Any potential saving, is not equivalent to earning, in cash. If it be construed otherwise, any savings made by the employee, on account of

food being made available at a concessional rate, would be taken as an income and be taxable as such. Savings, therefore, have to be clearly distinguished from earnings.

11. An emolument to qualify as "basic wages" has to be earned by an employee "while on duty or on leave or on holidays...". In the instant case, not only is food concession, not an emolument, it is not earned by an employee while he is on leave or on a holiday. Consequently, the demand is unjustified.

12. Furthermore, for an emolument to qualify as "basic wages" it needs to be paid or be payable in cash. There is no payment in the instant case to any employee on account of food concession, and therefore, this other pre-requisite, is also not satisfied.

13. Explanation 1 to Sec. 6 does not support the impugned demand as well. Section 6 reads thus:

6. Contributions and matters which may be provided for in Schemes:- (\*\*\*) The contribution which shall be paid by the employer to the Fund shall be 10 per cent of the basic wages, (dearness allowance and retaining allowance (if any) for the time-being payable to each of the employees (whether employed by him directly or by or through a contractor), and the employees' contribution shall be equal to the contribution payable by the employer in respect of him and may, if any employee so desires, be an amount exceeding ten per cent, of his basic wages, dearness allowance and retaining allowance (if any), a subject to the condition that the employer shall not be under an obligation to pay any contribution over and above his contribution payable under this Section:)

Provided that in its application to any establishment or class of establishments which the Central Government, after making such inquiry as it deems fit, may, by notification in the Official Gazette specify, this Section shall be subject to the modification that for the words ten per cent.", at both the places where they occur, the words "twelve per cent" shall be substituted:

Provided further that where the amount of any contribution payable under this Act involves a fraction of a rupee, the Scheme may provide for the rounding off of such fraction to the nearest rupee, half of a rupee or quarter of a rupee.

(Explanation 1):- For the purposes of this (Section), dearness allowance shall be deemed to include also the cash value of any food concession allowed to the employee.

(Explanation 2:- For the purposes of this (Section), "retaining allowance" means an allowance payable for the time-being to an employee of any factory or other establishment during any period in which the establishment is not working, for retaining his services.)

The pre-requisite once again is of "being payable", in contra-distinction to being saved and more importantly the basic wages, dearness allowance and retaining

allowance in respect to which P.F. contribution is expected, is such which is "payable to each of the employees". In the instance case, there is no payment.

14. As indicated hereinabove, the employees are free to avail or not to avail of the canteen facilities. The extent thereof also varies. The test of universality is, therefore, not satisfied at all, and therefore, too, the demand is unsustainable. The food concession is not uniformly availed by each of the employees and even if availed, the extent thereof would not be uniform. Manipal Academy of Higher Education Vs. Provident Fund Commissioner, .

15. The question of considering provident fund on the cash value of any food concession would only arise in an establishment like a catering establishment where providing a canteen is a statutory requirement, unlike in the case of the petitioner where providing of a canteen is not a statutory requirement at all. The Regional Provident Fund Commissioner and Pondicherry State Employees' Provident Fund Organisation Vs. Wipro Limited and The Presiding Officer, Employees' Provident Fund Appellate Tribunal, .

3A. Learned Advocate appearing for petitioner in Special Civil Application No. 1401 of 2000 submitted that she adopts all the submissions advanced on behalf of the establishment so far as challenge to two orders namely order dated 25-8-1999 and 21-10-1999 but in addition thereto, she submitted that as the action of establishment-management of withdrawing the subsidized food facilities was based upon the impugned orders, the employees' Union also choose to challenge said action and made appropriate prayers in this petition, in case, if the Court is not inclined to entertain writ petition on account of availability of alternative efficacious remedy, so far as prayers against the respondent-establishment, then, the liberty be reserved to bring about such action in appropriate forum.

4. Learned Advocate appearing for respondent P.F. Authority submitted that the provisions of Sec. 7A though in terms provides for determination of the amount to be deducted but that in itself cannot be construed so mandatory as to make it incumbent upon the authority to determine the amount also. The entire matter as could be seen from impugned order was decided on principle, and therefore, the quantum of deduction either an amount of deduction could be left to be worked out at appropriate level, the challenge to the impugned order on this ground made by the petitioner establishment is, therefore, not sustainable in eye of law.

5. Learned Advocate for respondent P.F. authority without prejudice to aforesaid submission and under instructions of the concerned authority submitted that in case if the Court is so inclined, some time be granted to the authorities to work out the specific amount and dues to be deducted on account of observations and findings recorded in the impugned orders. The learned Advocate for respondent in support of this submission, relied upon the provisions of Sec. 7C and submitted that in case, if any amount is escaped while exercising the jurisdiction

and power under Secs. 7A and 7B of the Act, the same could be completed within appropriate time, to which, an objection was raised on behalf of learned Advocate for petitioner-establishment that such an exercise is impermissible in light of the limitation embedded in that very provision.

6. Learned Advocate for respondent P.F. authority invited this Court's attention to the observations and findings recorded by the Competent Authority in the first order i.e. order dated 25-8-1999 and contended that the authorities have recorded its findings clearly that the amount of cash value equivalent to fund subsidized would be recovered by Explanation (1) to Sec. 6 of the P.F. Act and as such, the same would be justified and this Court may not interfere with the orders impugned.

7. Learned Advocate for respondent authority submitted that in case of Indian Petrochemicals Corporation Ltd. (Reliance Industries Ltd.) v. Regional Provident Fund Commissioner, in Special Civil Application No. 4294 of 2000, this Court under its order and judgment dated 10-1-2011 (Coram: K. A. Puj, J.) (as he then was) [reported in 2011 (1) GLR 828], held that the canteen subsidy of Rs. 475/- per month given to the employees of the petitioner pursuant to the settlement dated 9th August, 1995 cannot be said to be the cash value of any food concession and it does not fall within the ambit of Explanation (1) to Sec. 6 of the said Act, and hence, it cannot be deemed to be dearness allowance and not liable to deduction towards provident fund contribution. These findings, which may be said to be helping the contention of petitioner establishment were in fact carried out in Appeal being Letters Patent Appeal No. 398 of 2011 in Special Civil Application No. 4294 of 2000, whereunder, the Division Bench of this Court, as on 26-7-2011 passed order admitting the said appeal, and therefore, it was urged on that basis that the findings recorded by the Court is already subject-matter of consideration by the Division Bench, and therefore, this Court may not accept the submission canvassed on behalf of the petitioner establishment.

8. Learned Advocate for respondent-P.F. authority thereafter relied upon the decision in case of Gujarat Cypromet Ltd. Vs. Assistant P.F. Commissioner, , contended that the definition under Secs. 2(b), 6 and 7A would indicate that those provisions are benevolent provisions in the interest of weaker section and labour, and therefore, they need to be interpreted liberally. The emoluments would include and govern such subsidy under the head of Explanation (2) to Sec. 6, and hence, on that basis, it can be said that the orders impugned in this petitions may not be interfered with.

9. Learned Advocate appearing for respondent authority thereafter invited this Court's attention to the observations made by the Bombay High Court in case of Tata Power Company Limited Vs. Regional Provident Fund Commissioner and Others, , and submitted that those observations would clearly go to indicate that when the food item at subsidized rate is made available to the employees and staff members of the establishment then, it would surely fall into the ambit of Explanation (1) to Sec. 6 of the Act. In support of this submission, the Advocate

for respondent authority has relied upon the observations made by the Bombay High Court in Paras 7, 10, 12, 13, 15 to 18.

10. Learned Advocate appearing for P.F. authority thereafter relied upon the decision in the matter of Madras High Court in case of The Regional Provident Fund Commissioner and Pondicherry State Employees" Provident Fund Organisation Vs. Wipro Limited and The Presiding Officer, Employees" Provident Fund Appellate Tribunal, and submitted that like Bombay High Court, the Madras High Court also, did not consider the actual amount being paid to the employees in lieu of canteen facility to be falling within the ambit of Explanation 1 to Sec. 6 but had there been a case like one on hand, where actual food is being subsidized then, the concession or subsidize food and subsidy to that extent would be surely fall within the ambit of Explanation 1 to Sec. 6 of P.F. Act, as in the case before the Madras High Court also, like in Bombay High Court in case of Tata Power Company Limited Vs. Regional Provident Fund Commissioner and Others, the employer was offering a particular amount in lieu of providing canteen facility and it was contracted to be of basic wage and P.F. deduction under the P.F. Act, whereas, in the instant case, as submitted by Counsel for respondent authority, the canteen facility are provided and in that canteen facility the food is provided to the staff and employees and guests at subsidized rate. Thus, providing of food item at subsidized rate would attract the Explanation (1) to Sec. 6, and hence, the order impugned may not be interfered with.

11. Learned Advocate for respondent-P.F. authority thereafter relied upon the decision in the case of Regional Director, Employees" State Insurance Corporation Vs. High Land Coffee Works of P.F.X. Saldanha and Sons and Another, , contended that when the Legislature has used the term "include" the same is required to be given its logical purport and meaning, and therefore, any restriction read into the definition and explanation appended to Sec. 6 would be counter-productive and would be of no avail to the petitioner.

12. Learned Advocate appearing for respondent-P.F. authority thereafter, in all fairness relied upon the decisions of M.P. High Court in case of Surya Roshni Ltd. Vs. Employees Provident Fund and Another, , wherein, the canteen facilities and subsidy thereon was not treated to be falling under the ambit of explanation so as to subjecting it to deduction under the P.F. Act.

13. This Court has heard learned Counsels for the parties and perused the memo of petitions and annexures to the petitions. The following indisputable aspect emerges therefrom need mentioning as under:

I. The facts of these three petitions indisputably indicate that the canteen facilities was available within the precincts of the employer establishment and it is not disputed by anyone so far as Special Civil Application No. 2074 of 2000 is concerned, that this canteen facility was managed and run by Co-operative Society namely Deepak Nitrite Limited Credit Co-operative Society. In other

words, it can be said that the Co-operative Society, which managed the canteen was itself an entity governed by the provisions of the Co-operative Societies Act and was for that matter, a body corporate itself capable of suing and being sued itself. This aspect has not been emphasized in any manner either by the petitioner or by respondents nor has this aspect been adverted to in appropriate manner by anyone, therefore, the Court at this stage, need not dwell upon this aspect elaborately at this stage, but suffice it to say that this aspect has serious bearing upon the liability to deduct contribution of P.F. by the employer.

II. The parties have not disputed the aspect that the employer establishment was not under any statutory obligation to provide canteen facility, and therefore, much less under any obligation to provide subsidized food in the canteen. In other words, the contention made on behalf of employer establishment that employer was not under any statutory obligation even to provide the canteen facilities on the premises is not controverted by any party, at least not by the authorities under the P.F. Act. Therefore, this aspect also needs to be adverted to appropriately, which would indicate that there existed no statutory obligation or duty cast upon the employer establishment to provide canteen facility much less the subsidized food in the canteen itself.

III. The canteen was managed by the co-operative society and food stuff in the canteen was sold at subsidized rate as the subsidy was provided by the employer establishment. This subsidy was viewed to be food subsidy so as to attract the provisions of Explanation (1) to Sec. 6 of the P.F. Act by the P.F. authority.

IV. The canteen facilities were to be used by the employees at their volition and providing of coupon facilities was only for the smooth transaction within the canteen, whereunder, no role is attributed to the employer establishment so far as Special Civil Application No. 2074 of 2000 is concerned. In other words, it is not disputed that the providing of coupon to the employees was not undertaken or done by the management nor was it in any manner established to be part of wages or dearness allowance or for that matter, any other allowances or facilities offered to and accepted by all the employees and workmen in the establishment.

V. The workmen were absolutely under no obligation to avail the facility of subsidized food in the canteen run by the society and food items available in the canteen naturally were of different cost, wherein, the cost determination factor was not left to the employer establishment. In order to elaborate aforesaid proposition in other words, it can be said that no one has disputed the contention of employer establishment that the food item prices were not determined by the management establishment, though, losses, if any, were undertaken to be made good by the establishment but that was also for the welfare and as benevolent gesture on the part of employer, without any legal obligation to do so.

VI. The recording of purchase of coupon or coupons within 1 day or days together or in the entire month by employee, group of employees or none of them, is not elaborately discussed or attempted to be brought on record by the

parties as could be seen from the orders impugned in this petition.

VII. The authorities while exercising its jurisdiction under Sec. 7A, as could be seen from the provisions, are conferred with powers vested in Court, therefore, the power to summon and examine witness are very much available with the authority. In short, the entire inquiry to be undertaken under Sec. 7A is the inquiry which includes the power to ascertain, inspect and inquiry, as if, the authority was functioning as a Court. Despite such powers available, the authorities have not attempted to bring on record of their own accord any record qua purchase of coupon or bulk of coupon etc., on the contrary, the management establishment placed on record some data which also have not been adverted to by the respondent authority in its true prospective, while making the impugned orders.

VIII. The notice under Sec. 7A was issued, wherein, the subsidy on food article was one of the aspects for ascertaining why no contribution was made on this aspect, which ultimately, resulted into passing of orders and it is confirmed by the appellate authority, giving rise to these petitions as stated hereinabove one by the establishment and one by the Union, and by the establishment in other matter.

14. Against the aforesaid backdrop of factual aspect, this Court is called upon the examine essentially two orders passed by the authorities and its tenability in light of the provisions of P.F. Act and law developed thereupon. Therefore, before advertng to the rival contentions of the Counsel of the parties, it would be most appropriate to set out relevant provisions of law touching upon the subject:

Sec. 2(b): "basic wages" means all emoluments which are earned by an employee while on duty or (on leave or on holidays with wages in either case) in accordance with the terms of the contract of employment and which are paid or payable in cash to him, but does not include -

(i) the cash value of any food concession;

(ii) any dearness allowance (that is to say, all cash payments by whatever name called paid to an employee on account of a rise in the cost of living), house-rent allowance, overtime allowance, bonus, commission or any other similar allowance payable to the employee in respect of his employment or of work done in such employment; any presents made by the employer;

2(c) "contribution" means a contribution payable in respect of a member under a Scheme 7 (or the contribution payable in respect of an employee to whom the Insurance Scheme applies);

2(e) "employer" means -

(i) in relation to an establishment which is a factory, the owner or occupier of the factory, including the agent of such owner or occupier, the legal representative of a deceased owner or occupier and, where a person has been named as a

manager of the factory under clause (f) of sub-sec. (1) of Sec. 7 of the Factories Act, 1948 (63 of 1948), the person so named; and

(ii) in relation to any other establishment, the person who, or the authority which, has the ultimate control over the affairs of the establishment, and where the said affairs are entrusted to a manager, managing director or managing agent, such manager, managing director or managing agent;

2(f) "employee" means any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of (an establishment), and who gets his wages directly or indirectly from the employer, and includes any person,-

(i) employed by or through a contractor in or in connection with the work of the establishment;

(ii) engaged as an apprentice, not being an apprentice engaged under the Apprentices Act, 1961 (52 of 1961), or under the Standing Orders of the establishment;

2(ff) "exempted employee" means an employee to whom a Scheme or the Insurance Scheme, as the case may be, would, but for the exemption granted under Sec. 17, have applied;

2(fff) "exempted (establishment)" means (an establishment) in respect of which an exemption has been granted under Sec. 17 from the operation of all or any of the provisions of any Scheme (or the Insurance Scheme, as the case may be), whether such exemption has been granted to the (establishment) as such or to any person or class of persons employed therein;

2A: Establishment to include all departments and branches:- For the removal of doubts, it is hereby declared that where an establishment consists of different departments or has branches, whether situate in the same place or in different places, all such departments or branches shall be treated as parts of the same establishment.

Sec. 6: Contributions and matters which may be provided for in Schemes:-- The contribution which shall be paid by the employer to the Fund shall be (eight and one-third per cent.) of the basic wages, (dearness allowance and retaining allowance (if any) for the time-being payable to each of the employees [(whether employed by him directly or by or through a contractor), and the employees' contribution shall be equal to the contribution payable by the employer in respect of him and may, if any employee so desires, be an amount exceeding eight and one-third per cent. of his basic wages, dearness allowance and retaining allowance (if any), subject to the condition that the employer shall not be under an obligation to pay any contribution over and above his contribution payable under this Section.]

(Provided that in its application to any establishment or class of establishments

which the Central Government, after making such inquiry as it deems fit, may, by notification in the Official Gazette specify, this Section shall be subject to the modification that for the words "eight and one-third per cent.", at both the places where they occur, the words "ten per cent." shall be substituted:)

Provided further that where the amount of any contribution payable under this Act involves a fraction of a rupee, the Scheme may provide for the rounding off of such fraction to the nearest rupee, half of a rupee or quarter of a rupee.

(Explanation 1):- For the purposes of this (Section), dearness allowance shall be deemed to include also the cash value of any food concession allowed to the employee.

(Explanation 2:- For the purposes of this (Section), "retaining allowance" means an allowance payable for the time-being to an employee of any factory or other establishment during any period in which the establishment is not working, for retaining his services.)

Sec. 7: Modification of scheme:- (1) The Central Government may, by notification in the Official Gazette, add to, (amend or vary, either prospectively or retrospectively, the Scheme, the Family Pension Scheme or the Insurance Scheme, as the case may be).

(2) Every notification issued under sub-sec. (1) shall be laid, as soon as may be after it is issued, before each House of Parliament while it is in session, for a total period of thirty days, which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the notification, or both Houses agree that the notification should not be issued, the notification shall thereafter, have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification.

[7A. Determination of moneys due from employees:- (1) The Central Provident Fund Commissioner, any Additional Central Provident Fund Commissioner, any Deputy Provident Fund Commissioner, any Regional Provident Fund Commissioner or any Assistant Provident Fund Commissioner may, by order,-

(a) in a case where a dispute arises regarding the applicability of this Act to an establishment, decide such dispute; and

(b) determine the amount due from any employer under any provision of this Act, the Scheme or the Family Pension Scheme or the Insurance Scheme, as the case may be, and for any of the aforesaid purposes may conduct such inquiry as he may deem necessary];

(2) The officer conducting the inquiry under sub-sec. (1) shall, for the purposes of such inquiry, have the same powers as are vested in a Court under the Code

of Civil Procedure, 1908 (5 of 1908), for trying a suit in respect of the following matters, namely:-

- (a) enforcing the attendance of any person or examining him on oath;
- (b) requiring the discovery and production of documents;
- (c) receiving evidence on affidavit;
- (d) issuing commissions for the examination of witnesses; and any such inquiry shall be deemed to be a judicial proceeding within the meaning of Secs. 193 and 228, and for the purpose of Sec. 196, of the Indian Penal Code (45 of 1860).

(3) No order shall be made under sub-sec. (1), unless (the employer concerned) is given a reasonable opportunity of representing his case.

[(3A) Where the employer, employee or any other person required to attend the inquiry under sub-sec. (1) fails to attend such inquiry without assigning any valid reason or fails to produce any document or to file any report or return when called upon to do so, the officer conducting the inquiry may decide the applicability of the Act or determine the amount due from any employer, as the case may be, on the basis of the evidence adduced during such inquiry and other documents available on record.];

[(4) Where an order under sub-sec. (1) is passed against an employer ex-parte, he may, within three months from the date of communication of such order, apply to the officer for setting aside such order and if he satisfies the officer that the show-cause notice was not duly served or that he was prevented by any sufficient cause from appearing when the inquiry was held, the officer shall make an order setting aside his earlier order and shall appoint a date for proceeding with the inquiry:

Provided that no such order shall be set aside merely on the ground that there has been an irregularity in the service of the show-cause notice if the officer is satisfied that the employer had notice of the date of hearing and had sufficient time to appear before the officer.

Explanation:- Where an appeal has been preferred under this Act against an order passed ex-parte and such appeal has been disposed of otherwise than on the ground that the appellant has withdrawn the appeal, no application shall lie under this sub-section for setting aside the ex-parte order.

(5) No order passed under this Sec. shall be set aside on any application under sub-sec. (4) unless notice thereof has been served on the opposite party.].

Sec. 7C: Determination of escaped amount:- Where an order determining the amount due from an employer under Sec. 7A or Sec. 7B has been passed and if the officer who passed the order -

(a) has reason to believe that by reason of the omission or failure on the part of the employer to make any document or report available, or to disclose, fully and

truly, all material facts necessary for determining the correct amount due from the employer, any amount so due from such employer for any period has escaped his notice;

(b) has, in consequence of information in his possession, reason to believe that any amount to be determined under Sec. 7A or Sec. 7B has escaped from his determination for any period notwithstanding that there has been no omission or failure as mentioned in clause (a) on the part of the employer,

he may, within a period of five years from the date of communication of the order passed under Sec. 7A or Sec. 7B, re-open the case and pass appropriate orders re-determining the amount due from the employer in accordance with the provisions of this Act: Provided that no order re-determining the amount due from the employer shall be passed under this Section unless the employer is given a reasonable opportunity of representing his case.

7-I. Appeals to Tribunal:- (1) Any person aggrieved by a notification issued by the Central Government, or an order passed by the Central Government or any authority, under the proviso to sub-sec. (3), or sub-sec. (4), of Sec. 1, or Sec. 3, or sub-sec. (1) of Sec. 7A, or Sec. 7B (except an order rejecting an application for review referred to in sub-sec. (5) thereof), or Sec. 7C, or Sec. 14B, may prefer an appeal to a Tribunal against such notification or order.

(2) Every appeal under sub-sec. (1) shall be filed in such form and manner, within such time and be accompanied by such fees, as may be prescribed.

7-J. Procedure of Tribunals:- (1) A Tribunal shall have power to regulate its own procedure in all matters arising out of the exercise of its powers or of the discharge of its functions including the places at which the Tribunal shall have its sittings.

(2) A Tribunal shall, for the purpose of discharging its functions, have all the powers which are vested in the officers referred to in Sec. 7A and any proceeding before the Tribunal shall be deemed to be a judicial proceeding within the meaning of Secs. 193 and 228, and for the purpose of Sec. 196, of the Indian Penal Code (45 of 1860) and the Tribunal shall be deemed to be a Civil Court for all the purposes of Sec. 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

7-L. Orders of Tribunal:- A Tribunal may after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or annulling the order appealed against or may refer the case back to the authority which passed such order with such directions as the Tribunal may think fit, for a fresh adjudication or order, as the case may be, after taking additional evidence, if necessary.

(2) A Tribunal may, at any time within five years from the date of its order, with a view to rectifying any mistake apparent from the record, amend any order passed by it under sub-sec. (1) and shall make such amendment in the order if

the mistake is brought to its notice by the parties to the appeal: Provided that an amendment which has the effect of enhancing the amount due from, or otherwise increasing the liability of, the employer shall not be made under this sub-section, unless the Tribunal has given notice to him of its intention to do so and has allowed him a reasonable opportunity of being heard.

(3) A Tribunal shall send a copy of every order passed under this Section to the parties to the appeal.

(4) Any order made by a Tribunal finally disposing of an appeal shall not be questioned in any Court of law.

The close perusal of the aforesaid provisions in juxtaposition of facts of the petitions would make it clear that the real controversy revolves around interpretation of provisions of Sec. 2(b) and Sec. 6 of the P.F. Act. Section 2(b) in unequivocal terms excludes the cash value of any food concession, dearness allowance and presents made by the employer from the purview and ambit of "basic wages", whereas, Sec. 6 provides for contribution and matters that may be provided for in the Scheme framed under the provisions of P.F. Act and Explanation (1) of thereto. A deeming fiction is provided for including the cash value of any food concession allowed to the employee to be part of dearness allowances for the purpose of contribution as provided under Sec. 6 of the P.F. Act. Time and again, the Courts are called upon to adjudicate this controversy, as to what extent the Sec. 6 Explanation should be read in light of the definition of "basic wages" contained in Sec. 2(b) of the P.F. Act. The decision of the Apex Court in case of *Bridge and Roof Co. (India) Ltd. Vs. Union of India (UOI)*, , needs to be closely perused as it contained elaborate discussion on this aspect. The observations made by the Apex Court in case of *Bridge and Roof Co. (India) Ltd. Vs. Union of India (UOI)*, in Paras 7, 8, 9, 11, and 12 needs to be set out as under:

Para 7. The main question, therefore, that falls for decision is as to which of these two rival contentions is in consonance with Sec. 2(b). There is no doubt that "basic wages" as defined therein means all emoluments which are earned by an employee while on duty or on leave with wages in accordance with the terms of the contract of employment and which are paid or payable in cash. If there were no exception to this definition, there would have been no difficulty in holding that production bonus whatever be its nature would be included within this terms, the difficulty, however, arises because the definition also provides that certain things will not be included in terms "basic wages", and these are contained in three clauses. The first clause mentions the cash value of any food concession while the third clause mentions any present made by the employer. The fact that the exception contains even presents made by the employer shows that though the definition mentions all emoluments which are earned in accordance with the terms of the contract of employment, care was taken to exclude presents which would ordinarily not be earned in accordance with the terms of the contract of employment. Similarly, though the definition includes "all

emoluments" which are paid or payable in cash, the exception excludes the cash value of any food concession, which in any case was not payable in cash. The exceptions, therefore, do not seem to follow any logical pattern which would be in consonance with the main definition.

Para 8. Then we come to Cl. (ii). It excludes dearness allowance, house-rent allowance, overtime allowance, bonus commission or any other similar allowances payable to the employee in respect of his employment or of work done in such employment. This exception suggests that even though the main part of the definition includes all emoluments which are earned in accordance with the terms of the contract of the employment, certain payments which are in fact the price of the labour and earned in accordance with the terms of the contract of employment are excluded from the main part of the definition of "basic wages". It is undeniable that the exception contained in Cl. (ii) refers to payments which are earned by an employee in accordance with the terms of this contract of employment. It was admitted by Counsel on both sides before us that it was difficult to find any one basis for the exceptions contained in the three clauses. It is clear, however, from Cl. (ii) that from the definition of the word "basic wages" certain earnings were excluded, though they must be earned by the employees in accordance with the terms of the contract of employment. Having excluded "dearness allowances" from the definition of "basic wages", Sec. 6 then provides for inclusion of dearness allowances for purposes of contribution. But that is clearly the result of the specific provision in Sec. 6 which lays down that contribution shall be 6.1/4 per centum of the basic wages, dearness allowances and retaining allowances (if any). We must, therefore, try to discover some basis for the exclusion in Cl. (ii) as also the inclusion of dearness allowance and retaining allowances (if any) in Sec. 6. It seems that the basis of inclusion in Sec. 6 and exclusion in Cl. (ii) is that whatever is payable in all concerns and is earned by all permanent employees is included for the purpose of contribution under Sec. 6 but whatever is not payable by all concerns or may not be earned by all employees of a concern is excluded for the purposes of contribution. Dearness allowance (for example) is payable in all concerns either as an addition to basic wages or as a part of Consolidated wages where a concern does not have separate dearness allowance and basic wages. Similarly, retaining allowance is payable to all permanent employees in all seasonal factories like sugar factories, and is, therefore, included in Sec. 6; but house-rent allowance is not paid in many concerns and sometimes in the same concern it is paid to some employees but not to others, for the theory is that house-rent is included in the payment of basic wages plus dearness allowance or consolidated wages. Therefore, house-rent allowance which may not be payable to all employees of a concern and which is certainly not paid by all concerns is taken out of the definition of "basic wages" even though the basis of payment of house-rent allowance where it is paid is the contract of employment. Similarly, overtime allowance though it is generally in force in all concerns is not earned by all employees of a concern. It is also earned in accordance with the terms of the

contract of employment, but because it may not be earned by all employees of a concern it is excluded from "basic wages". Similarly, commission or any other similar allowances is excluded from the definition of "basic wages" for commission and other allowances are not necessarily to be found in all concerns, nor are they necessarily earned by all employees of the same concern, though where they exist they are earned in accordance with the terms of the contract of employment. It seems, therefore, that the basis for the exclusion in Cl. (ii) of the exceptions in Sec. 2(b) is that all that is not earned in all concerns or by all employees of a concern is excluded from basic wages. To this, the exclusion of dearness allowance in Cl. (ii) is an exception. But that exception has been corrected by including dearness allowance in Sec. 6 for the purpose of contribution. Dearness allowance which is an exception in the definition of "basic wages", is included for the purpose of contribution by Sec. 6 and the real exceptions, therefore, in Cl. (ii) are the other exceptions beside dearness allowances, which has been included through Sec. 6.

Para 9. This brings us to the consideration of the question of bonus, which is also an exception in Cl. (ii). Now the word "bonus" has been used in this clause without any qualification. Therefore, it would not be improper to infer that when the word "bonus" was used without any qualification in the clause, the Legislature had in mind every kind of bonus that may be payable to an employee. It is not disputed on behalf of the respondents that bonuses other than profit bonus were in force and well-known before the Act came to be passed in 1952. For example, the Coal Mines Provident Fund and the Bonus Scheme Act, No. 46 of 1948 provided for payment of bonus depending on attendance of employees during any period. Besides the attendance bonus, four other kinds of bonus had been evolved under industrial law even before 1952 and were in force in various concerns in various industries. There was first production bonus, which was in force in some concerns long before 1952 (See *Titaghur Paper Mills Co. Ltd. Vs. Its Workmen*, . Then there was festival or puja bonus which was in force as an implied term of employment long before 1952 (See *Ispahani Ltd., Calcutta Vs. Ispahani Employees' Union*, . Then there was customary bonus in connection with some festival (See *The Graham Trading Co. (India) Ltd. Vs. Its Workmen*, . And lastly, there was profit bonus the principles underlying which and the determination of whose quantum were evolved by the Labour Appellate Tribunal in the *Mill Owners Association v. The Rashtriya Mill Mazdoor Sangh Bombay*, 1950 (1) Lab. LJ 1247. The Legislature, therefore, could not have been unaware that these different kinds of bonus were being paid by different concerns in different industries, when it passed the Act in 1952. Therefore, unless the contention on behalf of the respondents that bonus when it was used without qualification can only mean profit bonus is sound, it must be held that when the Legislature used the term "bonus" without any qualification in Cl. (ii) of the exception is Sec. 2(b) it must be referring to every kind of bonus which was prevalent in the industrial field before 1952. The contention, therefore, of the respondents that when the term "bonus" was used in industrial law before 1952 without any qualifying terms

it meant only profit bonus and nothing else, requires careful consideration. We do not think, however, that this contention is well founded. It is true, as will appear from the terms of reference in various cases of profit bonus that the word "profit" was not used as a qualifying word before the word "bonus" in such cases, it may also be that in many cases where a particular type of bonus was in dispute, say, "attendance" or puja bonus, the qualifying word "attendance" or "puja" was used in references. But it appears that where a reference was in connection with profit bonus, the usual practice was to make the reference after qualifying the word "bonus" by the year for which the profit bonus was claimed. For example, we may refer to the case of *Mill Owners Association, 1950 (1) Lab. LJ 1247*, there in Para 16 at p. 1252, we find the term of reference in Reference No. 1 of 1948 *Mill Owners' Association Bombay v. Employees in the Cotton Textile Mills, Bombay* in these terms:

Para 11. This brings us to the consideration of the contention raised on behalf of the respondents that wages are the price for labour and arise out of contract and that whatever is the price for labour and arises out of contract was intended to be included in the definition of "basic wages" in Sec. 2(b), and that only those things were excluded which were a reward for labour not arising out of the contract of employment but depending on various other consideration like profit for attendance. It may be, as we have pointed out earlier, that if there were no exception to the main part of the definition in Sec. 2(b), whatever was payable in cash as price for labour and arose out of contract would be included in the term "basic wages", and that reward for labour of which did not arise out of contract might not be included in the definition. But the main part of the definition is subject to exceptions in Cl. (ii), and these exceptions clearly show that they include even the price for labour. It is, therefore, not possible to accept the contention on behalf of the respondents that whatever is price for labour and arises out of contract is included in the definition of "basic wages", and therefore, production bonus which is a kind of incentive wage would be included.

Para 12. This Court had occasion to consider production bonus in *Titaghur Paper Mills Co. Ltd. Vs. Its Workmen*, . It was pointed out that "the payment of production bonus depends upon production and is in addition to wages. In effect, it is an incentive to higher production and is in the nature of an incentive wage. The straight piece-rate plan where payment is made according to each piece produced is the simplest of incentive wage plans. In a straight piece-rate plan, payment is made according to each piece produced and there is no minimum and the worker is free to produce as much or as little as he likes, his payment depending upon the number of pieces produced. But in such a case payment for all that is produced would be basic wage as defined in Sec. 2(b) of the Act, even though, the worker is working under an incentive wage plan. The difficulty arises where the straight piece-rate system cannot work as when the finished product is the result of the co-operative effort of a large number of workers each doing a small part which contributes to the result. In such a case, the system of production bonus by tonnage or by any other standard is introduced. The core of

such a plan is that there is a base or a standard above which extra-payment is earned for extra-production in addition to the basic wages which is the payment for work up to the base or standard. Such a plan typically guarantees time wage up to the time represented by standard performance and gives workers a share in the savings represented by superior performance. The scheme in force in the Company is a typical scheme of production bonus of this kind with a base or standard up to which basic wages as time wages are paid and thereafter extra-payments are made for superior performance. This extra-payment may be called incentive wage and is also called production bonus. In all such cases, however, the workers are not bound to produce anything beyond the base or standard that is set out. The performance may even fall below the base or standard but the minimum basic wages will have to be paid whether the basic or standard is reached or not. When, however, the workers produce beyond the base or standard what they earn is not basic wages but production bonus or incentive wage. It is this production bonus which is outside the definition of "basic wages" in Sec. 2(b), for reasons which we have already given above. The production bonus in the present case is a typical production bonus scheme of this kind and whatever, therefore, is earned as production bonus is payable beyond a base or standard and it cannot form part of the definition of "basic wages" in Sec. 2(b) because of the exception of all kinds of bonus from that definition. We are, therefore, of opinion that production bonus of this type is excluded from the definition of "basic wages" in Sec. 2(b), and therefore, the decision of the Central Government which was presumably under Sec. 19A of the Act to remove the difficulty arising out of giving effect to the provisions of the Act, by which such a bonus has been included in the definition of "basic wages" is incorrect. In view of this decision, it is unnecessary to consider the effect of Art. 14 in the present case.

Thus, the Apex Court has clearly observed that though while casting the definition "basic wages" under Sec. 2(b), the Legislature has specifically excluded the dearness allowance and allowances mentioned thereunder with cash value of any food concession, but while casting Sec. 6 and explanation for providing the scheme and contribution, the concept of dearness allowances as well as cash value of food concession allowed to the employee is incorporated, and hence, the same needs to be construed accordingly. The dearness allowance is though, specifically excluded from the ambit of definition of "basic wages" the dearness allowance and other benefits incidental thereof, including the cash value of any food concession allowed to the employee, have been provided expressly by the Legislature in Sec. 6 for contribution and matters, which may be provided for in the Scheme, these two provisions, therefore, need to be borne in mind while examining the contentions canvassed on behalf of the parties i.e. employer-establishment and the P.F. authority.

15. The provisions of Sec. 2(b) read with Sec. 6 and explanation would thus make it clear that even if dearness allowance and other allowances may not be forming part of the basic wages yet it could be subject-matter of P.F. contribution

as Sec. 6 is treated to be the Section which is providing for scheme and contribution in the scheme etc. The Court need not dwell upon the aspect of submission canvassed on behalf of petitioner's Advocate that the food subsidy in form of canteen facilities would not be forming part of the basic wages as defined under Sec. 2(b) of the Act, as even the authority i.e. P.F. authority under Sec. 7A has not held that the canteen food subsidy is exigible to the P.F. contribution on account of it being part of the basic wages. Therefore, there is no need at this stage to elaborately dwell much upon this aspect of the matter as it would not be warranted. The submission, therefore, canvassed on behalf of the petitioner with regard to subsidized food facilities in the canteen would not be forming part of the basic wages or cannot be subjected to contribution on account of it being specifically excluded by the provisions of Sec. 2(b), would be unwarranted as the authority's own findings confirmed by the appellate authority also do not remotely suggest this, rather the authority has expressly held that the food subsidy in canteen would not be part of basic wages or that on account of food subsidy being excluded in the definition of 2(b), it would not be simply excluded from the purview of Explanation 1 to Sec. 6.

16. In view of the aforesaid discussion, therefore, what is falling for consideration of this Court is as to whether the reading of Sec. 6 in its entirety would make the subsidized food facility in the canteen exigible to the P.F. contribution. The plain reading of Sec. 6 would clearly indicate that the contribution which is payable by the employer to the fund includes 10% of the basic wages and dearness allowance and retaining allowances (if any) for the time-being payable to each of the employees and Explanation 1 specifically provides thereunder that for the purpose of this Section, i.e. Sec. 6 for contribution, the dearness allowances shall be deemed to be including also the cash value of any food concession allowed to the employees. The food concession in any other form if is established to be admissible, as part of dearness allowance cannot escape the ambit of Sec. 6, and therefore, on account of deeming fiction created by the statute, the food concession which is forming part of dearness allowance and which is required to be paid to the employees, would certainly fall within the ambit of Sec. 6 of the P.F. Act.

17. Learned Advocate for the respondent-P.F. authority laid heavy reliance upon the observations of the Bombay High Court in case of Tata Power Company Limited Vs. Regional Provident Fund Commissioner and Others, to support his submission qua the factum of fund being subsidy and offered to the employees would attract the provisions of Sec. 6 read with its Explanation (1). The Paragraphs relied upon are the Paragraphs set out hereinabove but close reading of these Paragraphs would clearly indicate that the said decision is of no avail to the respondent so as to bring the food subsidy within the ambit of Sec. 6 in the instant case. The subsidy provided in the food item value in the canteen as such would not form part of the dearness allowance. The fine nexus between the two was required to be established before the claim was raised so as to attract Sec. 6. The food concession or subsidized food offered to the employees stood allowed

without any further fringes and obligation would not ipso-facto be treated as forming part of dearness allowance so as to bring it within the ambit and purview of Sec. 6 read with Explanation (1) of the P.F. Act. The Bombay High Court has in fact observed in Paras 12 and 15, which deserve to be set out with specific emphasis even at the cost of repetition, to indicate that how and in what manner the subsidized food and subsidy on the food could be treated as part of dearness allowance, as it is required to be established to be an act incidental to the contract of employment.

Paragraph 12: Now one thing is clear, that the term must be interpreted as a whole having regard to the object of the legislation. In the first place, the term points to the cash value of any food concession allowed to the employees i.e. the value of the concession in regard to the food i.e. the value by which the price of food is reduced. This presupposes that food is provided to the employees as part of the terms and conditions of employment as seems to be the practice in some employments. It is only where food is supplied at a concession that the cash value of the concession can be computed. The Dictionary, the Concise Oxford" Ninth Edition describes the meaning of "concession" as follows:

Concession, 1(a) the act or an instance of conceding something asked or required (made the concession that we were right), (b) a thing conceded. 2(a) reduction in price for a certain category of person. 3(a) the right to use land or other property, granted esp. by a Government or local authority, esp. for a specific use, (b) the right, given by a company, to sell goods, esp. in a particular territory, (c) the and or property uses or given, concessional adj. Concessionary adj. (French concession from Latin concessio as CONCEDE).

In the present case, we are concerned with the meaning at 2 i.e. a reduction in price. Though, in the broadest sense concession can be used to describe any benefit conceded to another. Accordingly, a food concession is value to be construed as offering food at a concession. And the cash value of a food concession is liable to be construed as the value by which the price of food is reduced.

Paragraph 15: One thing that is clear from the decision is that there has been a practice in industrial employment in this country where the cash value of various benefits concessional supply of food-grains is computed while reckoning the charges payable. Under the Minimum Wages Act, the cash value of a concession always means the amount by which the value of an essential supply is reduced when supplied. Therefore, the term "cash value of any food concession" allowed to the employee means such value of the component by which the price of the item is reduced. This necessarily postulates the provision of the supply of an amenity such as food-grain for, without such supply, it would not be possible to calculate the value of any food concession allowed to the employee. There being no supply of any food by the petitioner, the payment of food allowance cannot be treated as the cash value of food concession allowed to the employee.

Thus, the inclusion of cash value on any food concession allowed to the employee has essentially to be a condition of employment or contract of employment and if such a condition exists, whereunder, the employer is under an obligation to offer food item at a subsidized rate and it is established that the part of offer of food is in lieu of the cash, otherwise, admissible to the employee in the course of employment, then, certainly it attract Sec. 6 and Explanation (1) thereto. But in the present case, the entire narration and facts on record clearly indicate that the cash facilities cannot be said to be forming part of dearness allowance or part of any monetary obligation or obligation in any manner to be discharged by the employer in favour of the employee, and therefore, this Court is of the considered view that the decision cited on behalf of P.F. authority upon the observation of Tata Power Company Limited Vs. Regional Provident Fund Commissioner and Others, to bring home the point for attracting Sec. 6 is of no avail to the respondent. The food item, even if it is subsidized, if not forming part of the wages from dearness allowance, which is an obligatory on the part of employer to pay, then, that food subsidy or concession cannot attract the provisions of Sec. 6 read with explanation thereto.

18. The observation of M.P. High Court in case of Surya Roshni Ltd. Vs. Employees Provident Fund and Another, would rather support the case of the establishment - employer for ousting the applicability of Sec. 6 and explanation thereto to the facts of the present case.

19. The reliance placed upon by the learned Advocate for respondent P.F. authority so far other authorities are concerned, is also of no avail to the respondent authorities as this Court is of the considered view that the canteen facilities and subsidized food facilities in the canteen, which was not forming part in any manner and which was specifically agreed to be not forming part of wages or basic wage or any allowances, then it was not exigible to the P.F. contribution, and therefore, orders passed by the authorities cannot be sustained in eye of law.

20. The Court having held as such, need not go into other aspect but even if one looks at the order, it becomes clear that the learned Advocate for establishment was fully justified in submitting that the orders suffer additional infirmities militating against its sustainability as orders impugned are bereft of any findings qua amount of contribution. There exists silence on the part of the authorities as to the amount of P.F. contribution, which in my view is additional ground for interference, as it also render the impugned orders unsustainable in eye of law. Therefore, the petition being Special Civil Application No. 2074 of 2000 is required to be allowed in its totality. Rule is made absolute. There shall be no order as to costs.

21. This brings, the Court to consider the additional prayer made in another writ petition being Special Civil Application No. 1401 of 2000, wherein this Court is of the view that the reasoning recorded hereinabove would take sufficient care of the apprehension on the part of Union and in case if the workmen's grievance still survive qua their prayers for subsidized food facilities, they are entitled to

agitate the same in appropriate forum in accordance with provision of the Industrial Disputes Act, 1947. The Court has not opined in any manner on those aspects as the Court is of the considered view that alternative efficacious remedy is also available with the petitioner of said petition. As a result thereof, the petition being Special Civil Application No. 1401 of 2000 is partly allowed. Rule is made absolute to that extent. So far third matter being Special Civil Application No. 3431 of 2000 is concerned, the only distinguishing feature is that the payment of coupons were collected by the employer and deducted from the wages of employees but if one looks at the order of the authorities, then it is almost similar to above, and therefore, Counsel for the petitioner has adopted all the submissions canvassed by the Advocate for the petitioner in Special Civil Application No. 2074 of 2000 and even the learned Advocate appearing for respondent-P.F. Authority did not elaborate argue this matter. Therefore, so far as this petition is concerned, the only question is required to be considered whether the factum of food coupons charges being deducted from the wages by the employer would itself be a action, which could said to be a food concession, the answer would be "NO", as there also, the nexus between the subsidy in food and dearness allowance and obligation to pay contribution is yet to be established, and therefore, in this matter also, the Court is of the considered view that the reasoning assigned hereinabove would govern the facts, and hence, this petition is also allowed and the impugned orders in the petition are quashed and set aside. Rule is made absolute to aforesaid extent. There shall be no order as to costs.