

(2000) 07 RAJ CK 0094
In the Rajasthan High Court
Case No : .C.S.A. No. 289 of 2000

Emmanuel Public School Society

APPELLANT

Vs

Regional Provident Fund Commissioner

RESPONDENT

Date of Decision : 03-07-2000

Acts Referred:

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

Citation : (2000) 86 FLR 914 : (2000) 2 RLW 1237 : (2000) 2 WLC 758 : (2001) 1 WLN 659

Hon'ble Judges : Ar. Lakshmanan, C.J.; Arun Madan, J

Bench : Division Bench

Advocate : R.K. Kala, for the Appellant;

Judgement

Lakshmanan, C.J.—This Civil Special Appeal is directed against the judgment of the learned single Judge of this Court in S.B. Civil Writ Petition No. 3805/1996, dated August 18, 1999 dismissing the writ petition filed by the appellant here and on the ground that the impugned order in the writ petition is based on the facts that the society is a branch of main society established at Kota. The short facts are as follows:

2. The appellant filed writ petition to quash the order dated, May 22, 1996 passed by the respondent declaring the appellant society as a coverable establishment under the provisions of Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter to be referred to as the Act of 1952). A further prayer to declare that no contribution, whatsoever, as has been demanded by the respondent under the impugned order is payable. The writ petition was admitted by Shri N.K. JAIN, J. a conditional order was also passed directing the respondent not to give any effect to the impugned order dated, May 22, 1996, provided the appellant furnishes an undertaking before the respondent that in case, the writ petition fails, he will pay entire amount alongwith interest. The undertaking was filed in terms of the order dated, September 18, 1996.

3. According to the appellant, the correct position was brought to the notice of

the Enforcement Officer vide Annexure-1, 2, 4 and 5; and inspite of the correct position brought to the notice of the Enforcement Officer, a notice u/s 7A of the Act was issued vide letter dated, September 1, 1994 (Annex-6) to Emmanuel Mission School, Kishangarh and demanded contribution from 6/90 to 6/94 and thereafter, another notice dated September 12, 1994 (Annex. 7) was issued by the respondent. It is the case of the appellant that he went to the office of the respondent and produced all the documents, such as, Attendance Register of the employees, Cash Book, rent deed, and the registration certificates etc., but no note of the same was taken by the respondent. They also submitted a written submission before the respondent on May 7, 1997 (Annex. 8) and thereafter, another letter dated January 24, 1995 was submitted alongwith the letter dated December 14, 1994 and copies of the documents, vide Annexure-9. It is also the case of the appellant that they got a certificate from Emmanuel School Society, Kota, dated March 28, 1994 in which it is clearly mentioned that the Emmanuel Mission School, Kishangarh, District Ajmer, is not a branch of Emmanuel School Society, Kota. This certificate was also produced before respondent No. 1 vide Annexure-10. However, the case was heard by the respondent on various dates and the last date of hearing was August 4, 1995. Thereafter, after a period of about 9 months, the respondent passed an order stating that the appellant establishment has been considered to be a branch of Emmanuel School Society, Kota and as such, its establishment has been deemed to be a coverable establishment. This order was passed vide Annexure-11 and a sum of Rs. 37,386/- was also demanded under the provisions of the Act.

4. Reply was filed by the Regional Provident Fund Commissioner denying all the allegations contained in the writ petition. According to the department, the matter was investigated by the Area Enforcement Officer and it was found that the school was set up on June 21, 1996 and the school was using the name of Kota school and was being run as a branch of Kota school. The reports of the Enforcement Officer also show that the admission forms, progress reports, prospectus, diaries, question papers of Kota school were used by the appellant establishment and all these papers were printed as Head Office (sic), Kota junction with telephone number of Kota school itself and that only in February 1993 it got separate registration. It is the case of the department that once the provisions of the Act are made applicable on the appellant school since June, 1990, the same cannot be recovered merely by getting its separate registration. It is also further submitted in the reply that the notice u/s 7A was rightly issued and that the order impugned in the writ petition is well reasoned order and does not call for any interference by this Court. Alongwith the reply affidavit Annexure R/1 to R/3 were also filed. The appellant filed a rejoinder to the reply affidavit on March 3, 1998. Mr. J.C. VERMA, J. vide order dated August 18, 1999, dismissed the writ petition against which the present appeal has been moved by the appellant.

5. We heard Mr. R.K. Kala, learned counsel appearing for the appellant, perused the impugned order passed by the learned single Judge and the order impugned

in the writ petition (Annex. 11). Mr. Kala, learned counsel for the appellant, submitted that the order of the respondent is not correct and that the respondent has not considered several representations made by the appellant and passed the order impugned after a long delay and without considering any of the factual statements made in the several representations, learned counsel submitted that the Emmanuel Public School Society, Kishangarh, is an independent society and the school run by this society has no connection, whatsoever with the Emmanuel School Society, Kota. It is also mentioned that M.A. Raju, President of the Emmanuel Public School Society, Kishangarh, took a rented house in his own name near Ravindra Rangmanch, Madanganj, Kishangarh where he started the appellant school after formation of the society known as Emmanuel Public Society, Kishangarh and also applied for registration before the Education Department, Government of Rajasthan and that the said Society was registered in the year 1996 as per the registration certificate Annexure-1 and the Constitution of the society Annexure-2. It is further argued that in the school run by the appellant society the total strength of the employees never reached more than 10 at any time and that the appellant had only two teachers in the year 1990-91 and in the year 1992-93 the total strength of the teachers never exceeded 8 and in the year 1994-95 there were 7 teachers and one person was also employed as Peon by the appellant society. It is submitted that the Enforcement Officer of the P.F. department had under the wrong notion considered the appellant society as a part of the Emmanuel School society and declared that the establishment of the appellant is coverable under the provisions of the Act and issued a notice on February 2, 1994, which was replied by letter dated June 12, 1994. It is also specifically mentioned in Annexure-5 that the appellant has no concern or connection with the Emmanuel School Society, Kota, It was also specifically mentioned in the reply that the appellant had a separate registration and a letter to this effect was obtained from the Emmanuel School Society, Kota, wherein the President of the Kota Society clearly admitted that the Emmanuel Mission School, Kishangarh, District Ajmer is not a branch of Emmanuel School Society, Kota. A copy of the said letter had also been filed as Annexure-10 to the writ petition. It is submitted by the learned counsel for the appellant that in spite of the reply and documents produced before the Enforcement Officer, the notice was issued u/s 7A of the Act and the order impugned was passed thereafter demanding contribution.

6. At the time of hearing, it is submitted that the order of the learned single Judge, which upheld the order of the respondent, is not correct and is against the facts of the case and as such, this appeal is liable to be allowed. Our attention was also drawn to the grounds mentioned in the Special Appeal. Learned counsel for the appellant has also placed strong reliance on the following judgments:

- (1) Regional Provident Fund Commissioner and Another Vs. Dharamsi Morarji Chemical Co. Ltd.,
- (2) Varanasi Fan Industries Pvt. Ltd. Vs. Regional Provident Fund Commissioner

and Another,

(3) Devesh Sandeep Associates and Others Vs. Regional Provident Fund Commissioner, Bangalore,

(4) Khoja Lime Udyog Vs. R.P.F. Commissioner,

(5) Allana Sons Private Limited Vs. R.M. Gandhi, The Regional Provident Fund Commissioner,

(6) Ebrahim Currim and Sons v. Regional P.P. Commissioner and Anr., (1994-I-LLJ-369)(Bom).

(7) Allied Agencies and Others Vs. Regional Provident Fund Commissioner,

7. We have perused the above rulings. In our opinion, there is merit, force and substance in the arguments advanced by the learned counsel for the appellant. A close scrutiny of the order passed by the Regional Provident Fund Commissioner, Rajasthan, dated May 26, 1996 (Annex. 11), would disclose the total non-application of mind by the officer concerned. The officer has not considered the various representations made by the appellant. The only reason which prompted the Regional Provident Fund Commissioner to declare that the appellant institution is coverable under the Act are the papers which were printed as Head Office, Kota Jn. He has further observed in the order as under:

"The matter was investigated by the Area Enforcement Officer and it was submitted that the establishment was set up on June 21, 1990 and was registered on February 27, 1993 vide registration No. 84-Ajmer/92-93. The school was using the name as "Emmanuel Mission School, Kishangarh" Head Office Kota". Area Enforcement Officer has certified that the Admission Forms, progress Reports, Prospectus, Diaries, question papers, Letter heads of Emmanuel Mission School, Kota were used by the establishment. These papers were printed as Head Office, Kota Jn. Rajasthan, Telephone No. 23171/ 27303. Therefore, the submission made by the establishment regarding non-connection of the both of the establishment cannot be considered as the establishment is a branch of the Emmanuel School Society, Kota. Moreover, the establishment was set up on June 21, 1990. It used registration number of Kota school and it is only in 1993 that school was separately registered."

8. The above reasoning, in our opinion, is not sufficient to hold that the appellant establishment is a coverable establishment under the provisions of the Act. The above reasoning given by the Provident Fund Commissioner has also been specifically answered by the appellant in paragraphs-2 to 6 of the Special Appeal. As pointed out by the learned counsel for the appellant, there is no evidence of common supervisory, financial or managerial control between the two units. In our opinion, the reasoning given by the Provident Fund Commissioner is not sufficient to infer that the establishment was not a new establishment, but was part and parcel of the other one. The Supreme Court and the various High Courts have held that the most important test for determining whether one unit is

branch or department of another is that of functional integrity and finance, employment and labour. There is no discussion at all by the Provident Fund Commissioner in regard to the functional integrity or that of finance, employment and labour. Unless there is direct evidence of interconnection between two units, there is no question of declaring a particular unit as the branch of the other unit. There must be common supervisory, financial or managerial control. Such evidence, in our opinion, is not available in the present case. In our opinion, the tests to find an establishment coverable u/s 2-A of the Act are distinct depending on facts and figures of each case and that no single test is conclusive to decide the question.

9. The contentions put forward by the learned counsel for the appellant merit acceptance and since the respondent has not examined the entire material/representations placed before him in its proper perspective, we have no other option except to set aside the order passed by the Regional Provident Fund Commissioner (Annex. 11) and as confirmed by the learned single Judge in the order impugned in this appeal and to direct the respondent to re-examine the entire matter afresh in the light of the observations made in this order. Since the entire matter requires reconsideration, we remit the matter to the respondent for fresh enquiry. We hold that a detailed enquiry afresh is necessary in the light of the averments made in the writ petition, Special Appeal and the documents filed as annexures. We direct the respondent to hold a detailed enquiry after giving notice to the appellant here and pass appropriate orders after examining all the facts and circumstances and in the light of this order.

10. With these observations and directions, the special appeal is disposed of. In the facts and circumstances of the case, no order as to costs.