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**(2016) 06 BOM CK 0199**  
**In the Bombay High Court**  
**Case No : Writ Petition No. 433 of 1998**

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| Kasturba Health Society              | Vs | APPELLANT  |
| Regional Provident Fund Commissioner |    | RESPONDENT |

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**Date of Decision :** 16-06-2016

**Acts Referred:**

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

**Citation :** (2017) 3 AIRBomR 237

**Hon'ble Judges :** Z.A. Haq, J.

**Bench :** Single Bench

**Advocate :** Shri A.S. Manohar, Advocate, for the Petitioner; Dr. R.S. Sundaram, Advocate, for the Respondent No. 1; Shri H.R. Dhumale, A.G.P, for the Respondent No. 2

**Final Decision :** Dismissed

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## Judgement

Z.A. Haq, J.(Oral)&mdash;Heard Shri A.S. Manohar, Advocate for the petitioner, Dr. R.S. Sundaram, Advocate for the respondent No. 1 and Shri H.R. Dhumale, A.G.P. for the respondent No. 2. None appears for the respondent No. 3.

2. In 1969, the Central Government framed scheme to check and control the population in the country and various hospitals were selected for implementing Post Partum Programme (for short "PPP"). As per the Scheme, the employees required to work for implementation of the Scheme were paid by the Central Government. The petitioner Society is administering a hospital where PPP was undertaken at the behest of Central Government.

The dispute in this petition is about the entitlement of such employees to receive the benefits under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (for short "Act of 1952") and the Scheme framed thereunder. The Regional Provident Fund Commissioner, by the impugned order, has concluded that the employees working under the PPP are entitled for the benefits under the Act of 1952 from the date of the applicability of the Act. The Regional Provident

Fund Commissioner directed the petitioner Society to comply with the provisions of the Act and the Scheme framed under it and to remit dues and submit returns. The petitioner being aggrieved by the order and directions of the Regional Provident Fund Commissioner, has filed this petition.

3. The employees working in the institution of petitioner Society under the PPP were terminated on 2nd June, 1997. The employees had filed Writ Petition No. 1568/1997 before this Court challenging the termination order. Writ Petition No. 1568/1997 was pending before this Court when the present writ petition (W.P. No. 433/1998) was filed by the petitioner Society. Therefore, while issuing Rule by the order dated 10th February, 1998, this Court recorded that the present petition will have to be decided after the decision of Writ Petition No. 1568/1997. The Writ Petition No. 1568/1997 is decided on 1st April, 2016. The Division Bench of this Court, relying on the judgment given by the Single Judge of this Court in the case of Ramakant Laxman Sarmalkar v. Nowrojee Wadia Maternity Hospital and Ors. reported in 2002(3) ALL MR 322 has concluded that the employees who were working in the institution administered by the petitioner Society under the PPP were not the employees of petitioner Society. The Division Bench has recorded that the compensation payable to the employees will have to be paid equally by the State Government and Ministry of Health, Family Welfare, New Delhi.

4. Relying on the judgment given in the case of Ramakant Laxman Sarmalkar v. Nowrojee Wadia Maternity Hospital and Ors. (cited supra) and the judgment given by the Division Bench in Writ Petition No. 1568/1997, the learned Advocate for the petitioner has argued that the petitioner cannot be held liable to deposit/pay the amount of provident fund payable to the employees working under the PPP as those employees were not the employees of the petitioner Society. Referring to the considerations in paragraph Nos.11, 12 and 13 of the judgment given in the case of Ramakant Laxman Sarmalkar v. Nowrojee Wadia Maternity Hospital and Ors. (cited supra) it is argued that under the PPP there was no provision for deposit/payment of provident fund and gratuity to the employees working under the PPP of the institution. The learned Advocate for the petitioner has submitted that the order passed by the Regional Provident Fund Commissioner is unsustainable in view of the judgment given in the Writ Petition No. 1568/1997 in which it is held that the employees in question were not the employees of petitioner Society. It is prayed that the impugned order be set aside.

5. Dr. R.S. Sundaram, learned Advocate for the respondent No. 1 has referred to Section 2(e) of the Act of 1952 i.e. definition of "employer" and has submitted that the petitioner being the agent for implementing the PPP and as the employees were working in the institution administered by the petitioner Society, it is liable to deposit/pay the contributions as per paragraph No. 30 of the Employees Provident Fund Scheme of 1952. The learned Advocate has supported the impugned order.

6. After going through the judgment given in the case of Ramakant Laxman Sarmalkar v. Nowrojee Wadia Maternity Hospital and Ors. (cited supra), I find that the employee in that case had filed complaint under Section 28 read with Items 5, 6, 9 and 10 of Schedule IV and Item 1(a)(b) and 4(a) of Schedule II of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 praying for the benefits and privileges of permanency from the hospital where they were employed under the PPP. The complaint was dismissed by the Industrial Court and the order passed by the Industrial Court came to be challenged. While dealing with the challenges raised by the employee claiming benefits and privileges of permanency, the learned Single Judge made some observations regarding the payment of provident fund and gratuity. While deciding the case of Ramakant Laxman Sarmalkar v. Nowrojee Wadia Maternity Hospital and Ors. (cited supra) the Court was not required to deal with the entitlement of the employee for the provident fund. There was no occasion for the Court to consider the provisions of Act of 1952. It cannot be said that while deciding the case of Ramakant Laxman Sarmalkar v. Nowrojee Wadia Maternity Hospital and Ors. (cited supra) this Court has decided that the employees working under the PPP are not covered by the Act of 1952 and are not entitled for the benefits under it.

Similarly, in Writ Petition No. 1568/1997 the Division Bench of this Court considered the challenge to the termination orders issued to the employees working under the PPP in the hospital administered by the petitioner Society. The relevant provisions of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 are considered by the Division Bench of this Court and there was no occasion to deal with the provisions of the Act of 1952.

7. Section 2(e) of the Act of 1952 defines the "employer" as follows:

"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 subsection (1) of section 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;

Para 30 of the Employees' Provident Funds Scheme, 1952 reads as follows :

30. Payment of Contributions ( 1) The employer shall, in the first instance, pay both the contribution payable by himself (in this Scheme referred to as the employer's contribution) and also, on behalf of the member employed by him

directly or by or through a contractor, the contribution payable by such member (in this Scheme referred to as the member's contribution).

(2) In respect of employees employed by or through a contractor, the contractor shall recover the contribution payable by such employee (in this Scheme referred to as the member's contribution) and shall pay to the principal employer the amount of member's contribution so deducted together with an equal amount of contribution (in this Scheme referred to as the employer's contribution) and also administrative charges.

(3) It shall be the responsibility of the principal employer to pay both the contribution payable by himself in respect of the employees directly employed by him and also in respect of the employees employed by or through a contractor and also administrative charges.

[Explanation For the purposes of this paragraph the expression "administrative charges" means such percentage of the pay (basic wages, dearness allowance, retaining allowance, if any, and cash value of food concessions admissible thereon) for the time being payable to the employees other than an excluded employee, and in respect of which provident fund contributions are payable, as the Central Government may, in consultation with the Central Board and having regard to the resources, of the Fund for meeting its normal administrative expenses, fix.]

It is undisputed that the employees in respect of whom the Regional Provident Fund Commissioner has passed the impugned order were working in the institution administered by the petitioner Society, though the petitioner Society claims that they were working under the PPP and for all purposes the Central Government, Ministry of Health, Family Welfare, New Delhi was their employer. In the judgment given in the case of Ramakant Laxman Sarmalkar v. Nowrojee Wadia Maternity Hospital and Ors. (cited supra) in paragraph No. 12, the learned Single Judge has recorded that the employees working under the PPP were not regular employees of the hospital even though they received their wages through the hospital and the hospital was only an agent of the Central Government. Considering the admitted fact that the petitioner Society was working as an agent to implement the Scheme of Central Government, the petitioner Society will fall in the category of "employer" as defined in Section 2(e) of the Act of 1952. It cannot be said that the impugned order upholding the petitioner Society liable for implementation of the provisions of the Act of 1952 and the Scheme framed under it is improper or unsustainable.

In view of the above, I do not see any reason to interfere with the impugned order. The petition is dismissed. In the circumstances, the parties to bear their own costs.

8. It is undisputed even on behalf of the respondent No. 1 that the liability of payment is to be assessed. It need not be stated that while determining the liability of payment, the Regional Provident Fund Commissioner shall consider the

judgment given by the Division Bench of this Court in Writ Petition No. 1568/1997 and also the effect of judgment given in the case of Ramakant Laxman Sarmalkar v. Nowrojee Wadia Maternity Hospital and Ors. (cited supra). Considering the conclusions of Division Bench recorded in the judgment given in Writ Petition No. 1568/1997 in paragraph No. 31, the Regional Provident Fund Commissioner shall issue notice and hear the Ministry of Health, Family Welfare, New Delhi and State of Maharashtra, through its Secretary, Public Health Department along with the petitioner.