

(2014) 11 KL CK 0238

In the High Court Of Kerala

Case No : W.A. No. 1225 of 2009 in O.P. No. 14067 of 2002

Kottayam Dist. Cooperative Hospital Society Ltd.

APPELLANT

Vs

The Regional Provident Fund Commissioner and Others

RESPONDENT

Date of Decision : 18-11-2014

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 1, 1(3)(a), 1(3)(b), 16, 16(1)(a)
Kerala Co-operative Societies Act, 1969 — Section 61, 80-A
Kerala High Court Act, 1958 — Section 5(i)

Citation : (2015) 146 FLR 143 : (2015) 1 LLN 719 : (2015) LLR 540

Hon'ble Judges : Antony Dominic, J; Alexander Thomas, J

Bench : Division Bench

Advocate : T.A. Shaji, Advocates for the Appellant; N.N. Sugunapalan, Senior Advocate, Advocates for the Respondent

Judgement

Alexander Thomas, J.—Aggrieved by the impugned Exts. P1, P3 & P5 proceedings issued by the Respondent-Employees' Provident Fund Authorities deciding on the coverage of the Petitioner's institution as envisaged under Section 1(3)(b) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, the Appellant-Kottayam District Cooperative Hospital Society Ltd., had preferred the Writ Petition, O.P. No. 14067/2002 before this Court praying to quash the said impugned Orders and for declaration that the Appellant/Petitioner-Hospital Society will not come within the purview of the above said Act. The learned Single Judge, as per the impugned Judgment rendered on 25.2.2009, after an exhaustive analysis of the factual and legal aspects of the matter, came to the considered conclusion that the challenge made in the Writ Petition is without any substance and the learned Single Judge thus upheld the validity of the impugned Orders. Aggrieved by the impugned Judgment, the Writ Petitioner-Hospital Society has preferred this intra-Court Appeal by resorting to the remedy conferred under Section 5(i) of the Kerala High Court Act. The main contention urged by the Appellant-Society is that the Hospital Society will not satisfy the

requirements of the Notification under No. GSR 1082 dated 15.9.1973 and the earlier Notification as per GSR No. 1393 dated 17.9.1964 issued under Section 1(3)(b) of the above said Act and, therefore, the impugned Orders are liable to be quashed. Another contention that has been raised is that the above said Act (referred for short as "E.P.F. Act") will not apply to the Appellant-Society in view of the provisions of Section 16(1)(c) of the E.P.F. Act, as the Appellant-Society is a Cooperative Society registered under the Kerala Cooperative Societies Act, in view of the specific provisions made in Sections 61 & 80-A of the Kerala Cooperative Societies Act and Rule 58 of the Rules framed under the State enactment.

2. Heard Sri T.A. Shaji, the learned Senior Counsel appearing for the Appellant-Hospital Society and the learned Counsel appearing for the Respondent-E.P.F. Authorities.

3. The Petitioner-Society is said to be a society registered under the provisions of the Kerala Cooperative Societies Act and is running a Computed Axial Tomography (C.A.T./C.T.) Scan unit, a Neethi Medical Store and a Clinical and Pathological laboratory and it is the specific case of the Petitioner that no treatment facility is being offered to any inpatient and that there is no provision for Hospitalization by way of admitting inpatients in the said institution and that the Petitioner is not a "Hospital" or a "Clinic" as envisaged in the above said Notifications issued under Section 1(3)(b) of the E.P.F. Act. After conduct of the inspection by the Respondent-Statutory Authorities, the Petitioner was served with Ext. P2-Proceedings requiring rectification of the defects pointed out therein and after consideration of the detailed explanation submitted by the Petitioner, the 1st Respondent had passed Ext. P3 - Order dated 7.8.2001, directing the Petitioner-Society to implement the provisions of E.P.F. Act and the three schemes to all its twenty Employees with effect from 1.2.2001. The proceedings as per Ext. P3 herein were challenged by the Petitioner by filing Writ Petition as O.P. No. 25291/2001 before this Court, wherein this Court as per Ext. P4-Judgment rendered on 19.2.2002, directed that the Petitioner is to invoke the Review Petition remedy for consideration of the grievances against the said impugned Order and direction was issued to the Respondent-E.P.F. Authorities to consider such Review Petition and to take decision thereon in accordance with law. In compliance with Ext. P4-Judgment, the Respondent-E.P.F. Authorities after affording a reasonable opportunity to the Petitioner, considered the entire matter in depth and passed the impugned Ext. P5-Order dated 24.4.2002 holding that the Petitioner-Society is in fact covered by the above said Act and that the Petitioner is liable to implement the provisions of the E.P.F. Act and the schemes framed thereunder with effect from 1.2.2001. It is challenging these proceedings that the Petitioner had filed the instant Writ Petition, which led to the impugned Judgment rendered by the learned Single Judge, which has now led to the present Writ Appeal.

4. Section 1(3)(b) of the E.P.F. Act reads as follows:

"1. Short title, extent and application.--

(3) ...

(a) to every establishment, which is a Factory engaged in any industry specified in Schedule I and in which twenty or more persons are employed, and

(b) to any other establishment employing twenty or more persons or class of such establishments which the Central Government may, by Notification in the Official Gazette, specify in this behalf:

Provided that the Central Government may, after giving not less than two months' Notice of its intention so to do, by Notification in the Official Gazette, apply the provisions of this Act to any establishment employing such number of persons less than twenty as may be specified in the Notification."

5. It is not in dispute that the Petitioner-Hospital Society will not come within the purview of Section 1(3)(a) as it is not a factory as understood therein. Notification No. GSR 1393 dated 17.9.1964 was issued by the Central Government, invoking the power under Section 1(3)(b) of the E.P.F. Act, whereby every establishment of the Medical Practitioners and Medical Specialists in which 20 or more persons are employed has been brought within the purview of the said Act. Later the Central Government also issued another Notification as per G.S.R. No. 1082 dated 15.9.1973. It is also not in dispute that later the Central Government had issued another Notification under Section 1(3)(b) of the Act, as per Notification No. GSR 1082 dated 15.9.1973, which reads thus:

"G.S.R. 1082: In exercise of the powers conferred by Clause (b) of sub-section (3) of Section 1 of the Employees' Provident Funds and Family Pension Fund Act, 1952 (19 of 1952), the Central Government hereby specifies every establishment known as Hospital run by any individual, association or institution (other than the establishment covered by Clause (vi) of the Notification of the Government of India in the late Department of Social Security No. G.S.R. 1398 dated the 17th September 1964) as the establishment to which the said Act shall apply with effect from the 31st August, 1973."

6. It is not in dispute that the Appellant-Hospital Society has the following activities as referred to in the impugned Ext. P3 - Order, viz., (1) whole body CT Scan unit (2) Neethi Medical Store, and (3) Clinical Laboratory and Pathological Laboratory and that for its functioning, the Appellant employs Doctors, Pathologists, Radiologists, Administrative Staff, Nursing Staff, Pharmacists, Radiographers, etc. and the employment strength had reached 20 or more in the month of February, 2001.

7. The sheet anchor of the contentions raised by the Appellant is that though the Appellant-Society is termed as "a Hospital Society", in fact it is not providing any provision of Hospitalization or admitting inpatients and that it is not offering any treatment facility to patients and that its activity is related to diagnosis of diseases by running the whole body Scan Unit, Clinical Laboratory, Pathological

Laboratory and that it also runs a medical store. The contention is that in order to rope in an institution within the provisions of the four corners of the statutory Notification as per GSR No. 1082 dated 15.9.1973, the institution must be a "Hospital" and in order to satisfy the requirement of being a Hospital, there should necessarily be provision for inpatient Hospitalization facility and/or at least facilities for treatment of patients. It is contended that the Appellant has no facility for inpatient Hospitalization or for any facility or service offering outpatient consultation of patients and that in the absence of meeting such vital requirements, the institution cannot be said to be "Hospital" within the meaning of the above said Central Notification dated 15.9.1973 and therefore the Appellant-Society cannot be brought within the ambit of the E.P.F. Act, as it is not an institution covered by Section 1(3)(b) of the Act.

8. So the main issue posed before us is as to whether an institution like the Appellant-Society, which is providing services by running a whole body CT Scan Unit, Clinical Laboratory and Pathological Laboratory, etc. can be said to be a "Hospital" as envisaged in the Central Notification dated 15.9.1973 or the Notification dated 17.9.1964. The learned Senior Counsel appearing for the Appellant would strongly urge that the learned Single Judge fell into error by construing the Notification dated 15.9.1973 as though, if the name of the institution is bearing the word, "Hospital", then it would be covered by that Notification, since the wording used in that Notification is that "every Hospital known as Hospital".

9. Therefore, it is contended that the essence and substance of the activity conducted by the institution is to be ascertained and that if in reality, the institution is not offering the facility of inpatient hospitalization and treatment, it cannot be said to be a Hospital and therefore, it will not come within the coverage of the 1973 Notification, even though the institution may be known by a name, in which the word "Hospital" is also included.

10. In the case of Employees Provident Fund Inspector Vs. The Poly Clinic (P) Ltd., , this Court has construed the requirements of both the above said Notifications, viz., GSR 1393 dated 17.9.1964 as well as the Notification No. GSR 1082 dated 15.9.1973, rendered in Second Appeal No. 1024/1982 (Judgment dated 16th June, 1988). There the Plaintiff was running an institution by the name "Poly Clinic", which was employing more than 20 persons and earlier till 1968, it was a full fledged Hospital with in-patient departments and later inpatient wing was closed and all other facilities were continued and three or four Doctors, two of whom were the Directors of the Company running the clinic and one Doctor was a shareholder, who examined the patients and prescribed medicines, which are supplied from the establishment itself and it also ran a Pharmacy, a Blood Bank, X-ray Clinic and Medical Laboratory, etc. This Court held in the above said decision that the institution therein is evidently an establishment of Medical practitioners and specialists coming within 1964 Notification even if it is treated to be not a "Hospital" coming within the purview

of 1973 Notification and held that exclusion of establishments of Medical practitioners and specialists from 1973 Notification is immaterial because its inclusion as a Hospital may not arise, if it comes under the Notification of 1964 and that fact that the establishment is owned and managed by a Company and not individually by medical practitioners and specialists is of no concern and even if the Doctors of that institution were Directors of the Company, it is immaterial and it will continue to be an establishment of Medical practitioners and specialists. That a clinic or a Dispensary or a Pharmacy or by whatever name it is called, an establishment of Medical practitioners and Specialists and employing 20 or more persons could come within the purview of 1964 Notification. It is categorically held by this Court that Notification 1973 Notification was published only for the purpose of bringing in such other institutions which could successfully escape from the previous one (1964 Notification) and it may be for that purpose, that the word, "Hospital" is used in the 1973 Notification, because Hospitals are likely to be taken out of the purview of establishments of Medical Practitioners and Specialists. That a highly restricted and technical interpretation of the word "Hospital" in contrast with "Clinic" or "Dispensary" may give room for a narrow meaning. It was held by this Court that it may be true that there is such a distinction between a "Hospital" on the one hand and a "Clinic" or "Dispensary" on the other in common understanding, but that generally Hospital is the genus of which clinic and dispensaries are only species and the purpose of all is generally treatment of the sick. It was held therein by this Court that while interpreting an establishment for the purpose of the Notification to decide based on the applicability of the provisions of the E.P.F. Act and Scheme, the word "Hospital" must receive a liberal interpretation, because the primary object is to confer the benefit of the Labour Welfare legislation like the E.P.F. Act to the Employees is not to exclude an establishment on the ground that in-patients are not admitted. This Court further held in Para 10 of the said decision that as follows:

"10. The word "Hospital" itself may have its origin from the words "hospitable" or "Hospitality" which include giving or affording a general welcome and entertainment to guests or strangers received. It is not necessary that reception or entertainment must be for stay even though stay could also be contemplated. In the New Webster's Dictionary of the English Language (Deluxe Encyclopedic Edition 1981), Hospital is defined as an institution in which sick or injured persons are given medical, obstetric, psychiatric, or surgical treatment or nursing care. Corpus Juris Secundum, Vol. 41 page 331 says that the word "Hospital" is used in many senses and ordinarily a Hospital is an institution for the reception and care of sick, wounded, infirm, or aged persons. In common usage "Hospital" is said to be an institution maintained for providing a place to which persons may resort for medical or surgical treatment or is a place where medicine is practiced by physicians. According to the Random House Dictionary of the English Language also "Hospital" includes an institution in which sick or injured persons are given medical or surgical treatment. Even Stedman's Medical Dictionary

mentioned "Hospital" only as an institution for the care, cure and treatment of the sick and wounded, for the study of disease and for the training of physicians and nurses. Shorter Oxford Dictionary or Stroud's Judicial Dictionary have also not given anything different. From these definitions I was not able to conclude that facility for hospitalization is a condition precedent to make an institution a Hospital, even though in most of the Hospitals that facility may also be there. To put it otherwise, absence of in-patient facility by itself will not deprive an institution of its otherwise status as a Hospital. From the above meanings in standard dictionaries also it may not be out of place to give a general interpretation to the word "Hospital" so as to include a treatment centre without in-patient facility for the purpose of such a legislation especially in view of the business transacted and facilities available in the Plaintiff-Institution. Further the word is used in the Notification not for the purpose of drawing the niceties of distinctions between Hospitals and other establishments, but only demarcate an establishment employing 20 or more persons where medical care and treatment are imparted. Such care and treatment could be effectively imparted without in-patient wing as is done in the institution in question."

11. Accordingly, we have hesitation to hold that the word "Hospital" used in 1973 Notification, should receive liberal interpretation so as to effectuate the objects and purposes of the Act, a welfare legislation. So the facility of Hospitalization is not a condition precedent to make an institution a Hospital, as understood in the 1973 Notification, even though in most of Hospital such facility may be provided and mere absence of inpatient facility by itself will not deprive an institution of its status as a Hospital, if it is satisfying the requirement as a centre for the study of diseases or as a place where there is "practice of medicine" as understood in the larger sense of the term. An institution running a C.T. Scan Unit, Clinical Laboratory, Pathological Laboratory, etc. and employing specialists, professional Doctors like Pathologists, Radiologists and other Doctors, who are aided by other supporting Nursing staff and Paramedical staff like Pharmacists, Radiographers, etc. is certainly a centre which is conducting the diagnosis of diseases of the persons who approach that centre for availing its services. Such an establishment involved in the crucial activity of diagnosis of diseases, is certainly a centre which is involved in the study of diseases by employing Doctors and other professional Specialist Doctors like Radiologist, Pathologist, etc. and supported by Nursing staff, Pharmacists, Radiographers, etc. Therefore, such a centre, which is involved in the activity of "practice of medicine" as understood in the larger sense and in which such activities are undertaken mainly by professional Doctors involving in the activity of study of diseases and to give their considered professional opinion and advice as to the diagnosis of such diseases by the help of sophisticated equipments and methods like whole body C.T. Scan Unit, Pathological Laboratory, Clinical Laboratory, X-ray Unit, etc. It is not as if professional Doctors and specialist Doctors are not employed in the Appellant-Centre. The fact that the Centre is owned by a Cooperative Society and the doctors and the Specialist Doctors are only Employees of the Centre makes

no difference to the issue at hand, more so, in view of the above said considered reported decision of this Court referred to above. We are in full agreement with the legal principles and the "ratio decidendi laid down by this Court in the Judgment in Poly Clinic"s case (supra).

12. Diagnosis of diseases of patients is one of the most vital and integral activities connected with the function of Medical practice carried on in institutions, which are known in common parlance as Clinics, Hospitals, etc. May be that at least till the seventies or even upto the eighties, most of the Pathological/Clinical Laboratories that were functioning as independent units in our country, would have been manned exclusively by Technical staff and/or other appropriate Paramedical personnel. It may be that in such an old scenario, Medical Doctors or even professional Medical Specialists may not have been directly involved or employed in the conduct of such old generation Pathological/Clinical Laboratories. Now it is a common knowledge that especially since the late eighties or from nineties, with the advent of more and more specialized and superspecialised medical facilities, many Diagnostic laboratories, highly qualified Doctors, Medical Professional Specialists who have specialised in appropriate specialities like Pathology, Clinical Pathology, radiology, Radio Diagnosis, Sonography, Micro Biology, etc. and in the case of quite a few instances even superspecialised Medical personnel, are directly involved either as paid Employees or as consultants or otherwise, to directly participate in the crucial activity of diagnosis of patients, by taking recourse to highly advanced technological equipments like computed Axial Tomography (CAT/CT) scanning machines, Magnetic Resonance Imaging (MRI) Scan and various other aids in Clinical Pathology, Pathology, Micro Biology, etc. Irrespective as to whether or not such qualified Medical personnel are owning and managing such institutions, so as long as such Medical personnel are directly involved and participate in the diagnosis of diseases with the help of such aids and methods, certainly such a centre is involved in the study of diseases of the patients, who approach such centres and hence, it is a place where medicine is practised, as understood in the larger sense of the term. The law is not static and the law is having a dynamic and wholesome organic character, which will mould according to the changing scenarios and realities of the situation that govern the relationships in the society or community at large. So even if the framers of the E.P.F. Act, 1952 or the statutory authors of the aforementioned Notifications issued in 1964 & 1973 were not faced with the situation of having such new generation Diagnostic Centres that we have today, the words in the provisions and the Notifications concerned, have to be interpreted realistically and pragmatically, taking its content and colour from the context of the matter, so as to fully effectuate the will of the Parliament, which has framed this piece of plenary law, essentially as a Labour/Employee welfare legislation. This is the hard task of the Judge, who is faced with the onerous responsibility to interpret the law and effectuate the will of legislature, which essentially reflects the majority will of we, the people of India. In this view of the matter, we have no hesitation to fully rely on the above

said decision of this Court reported in Employees Provident Fund Inspector Vs. The Poly Clinic (P) Ltd., . Accordingly. We hold that the Appellant-Hospital Society, which is essentially running a Diagnostic Centre, as stated above, will fulfill the definition of "Hospital" as understood in the above said 1973 Notification.

13. The learned Counsel for the Respondent-E.P.F. Authorities would submit that it would also appear that in a case like the instant one, where specialists in the specialities of Pathology, Radiology, etc. and other Doctors are being employed, the institution could also be called as an establishment of Medical practitioners and Medical specialists, as understood in 1964 Notification and that as it does not make any difference as to whether such doctors are owning and/or managing the centre and that so long as such Doctors, Medical Specialists, etc. are directly involved in the activity of diagnosis of diseases. Some of the observations in the aforementioned decision of this Court in the Poly Clinic's case (supra) would also throw some light in this regard. There are observations of this Court in Paragraph 8 of the Judgment in the Poly Clinic's case (supra) that a highly restricted and technical interpretation of the word, "Hospital" in contra-distinction with "Clinic" or "Dispensary" may give room for a narrow meaning and that these subtle distinctions need be considered for differentiation only in cases where it is necessary, but that generally Hospital is the genus of which Clinic and Dispensaries are only species for the purpose of both is generally treatment of the sick. Due to the new changes in the health care sector, there may be some grey areas in the wordings of the 1973 Notification which mention that it covers those establishments other than those in Clause (vi) of the 1964 Notification. The framers of the 1973 Notification may not have been faced with the present reality of the new generation sophisticated Diagnostic Clinical Centres conducted with the active participation of Specialist Doctors/Medical Professionals and other Doctors and Staff. So the fine line of distinction that existed earlier between the establishments envisaged in the 1973 Notification and 1964 Notification, have become blurred at least in cases of such sophisticated new generation Diagnostic Centres. Such a modern Diagnostic Center conducted by Medical professionals could satisfy the broad substantial requirements of both the 1964 Notification and the 1973 Notification. In the facts and circumstances of the instant case, the Diagnostic Centre of the Appellant running whole body C.T. Scan Unit, Clinical Laboratory, Pathological Laboratory, employing Doctors and Specialist Medical Professionals is also an establishment of Medical Practitioners and Medical Specialists as envisaged in Clause (vi) of the 1964 Notification.

14. Indisputably, the Appellant-Hospital Society has the Employees" strength which is above the threshold limit of 20 or more and hence, the Appellant-Society is thus an institution which is covered in terms of Section 1(3)(b) of the E.P.F. Act.

15. As regards the Appellant's contention that they can claim the benefit of Section 16(1)(c) of the E.P.F. Act, it has to be noted that the Appellant-Society is

a Cooperative Society registered under the Kerala Cooperative Societies Act, which is an enactment made by the Legislature of the State of Kerala. It is settled position that the provisions of the Kerala Cooperative Societies Act and Rules only enable registration and formation of the Societies by taking recourse to the formalities prescribed thereunder for such purposes and the Appellant-Society is one such society so formed and registered under the enabling provisions of the said State Act and Rules. It is also well settled that a Cooperative Society registered under the Kerala Cooperative Societies Act is not created by the said Act and therefore, the Appellant-Cooperative Society cannot be said to be set up under a State Act as envisaged in Section 16(1)(c) of the E.P.F. Act, 1952. It needs no authority to hold that Cooperative Society like the Appellant Society cannot be said to be an Establishment belonging to or under the control of the Government as envisaged in Section 16(1)(b). Moreover, it is admitted case that the Petitioner-Society has been using electric power for its functioning and the Appellant-Society cannot be said to be a Cooperative Society working without the aid of power as envisaged in Section 16(1)(a) of the E.P.F. Act. Accordingly, the contentions of the Petitioner based on Section 16 of the E.P.F. Act, and the provisions of Sections 61 & 80-A of the Kerala Cooperative Societies Act and Rule 58 of the Kerala Cooperative Rules cannot be countenanced and cannot help the Appellant in any manner. Moreover, we have already held that the Appellant-Society is covered in terms of Section 1(3)(b) of the E.P.F. Act, 1952, which is a Central Act. So the provisions of the E.P.F. Act, which is a Central Act, will have overriding effect over the Kerala Cooperative Societies Act, which is a State enactment, due to the principles based on the paramountancy of the Central Legislation.

16. Finally the Appellant had also raised a contention based on Section 17(1)(a) of the Act, which stipulates that appropriate Government may, by Notification, exempt any establishment to which the E.P.F. Act applies, if in the opinion of the appropriate Government, the Rules of the Provident Fund with respect to the rates of contribution are not less favourable than those specified in Section 6 of the E.P.F. Act and the Employees are also in enjoyment of other Provident Fund benefits, which on the whole are not less favourable to the Employees, than the benefits provided under the E.P.F. Act and the Scheme in relation to the Employees in any other establishments of a similar character, etc. In the impugned Ext. P5-Order, the Respondent-Authorities have clearly held as follows in the penultimate Paragraph of Ext. P5:

"The contention of the establishment that it is having a Provident Fund and the Pension Scheme available under Cooperative Pension Rules is being implemented to the Employees of the Society also appears hollow. During the course of the inquiry by the Enforcement Officer as well as the Section 7-A-Authority no such claim is established. In the balance sheet of the establishment for 1999-2000 shows as item "Provident Fund Security contribution of Rs. 12,274/-" during the year 1999-2000. It is admitted that the establishment pay certain contribution to the Permanent Employees and such contribution is deposited in the Savings Bank

Account of District Cooperative Bank. It is also admitted that the establishment recovers 10% of the Basic Wages towards Provident Fund Contribution from the wages of Permanent Employees only. The provision of the Employees' Provident Funds and Miscellaneous Act, 1952 ensures 10% or 12% of the wages which includes Basic Pay, DA and value of any Food Concession etc. It also ensures that the Social Security benefit is available to all Employees irrespective of the fact whether they are Permanent Employees, Temporary Employees or Employees on Contract basis. It is applicable to all Employees drawing wages from the establishment. The 3 schemes applicable under the Act also ensures Provident Fund, Pension and Insurance Funds. The Establishment's claim of having a Provident Fund cannot, therefore, be an excuse for not implementing the Act and Schemes. In case the Establishment offers any scheme which is more beneficial than that of under the Employees' Provident Fund Scheme, the Establishment has a right to seek exemption under Paragraph 17(1)-A or 17(1)-B of the Act and Paragraph of the Employees' Pension Scheme, 1995."

The above said factual findings referred to above in the impugned Ext. P5 have not in any way been rebutted or challenged by the Appellant and the Respondent-Authority has already held in the impugned Order that the establishment has the right to seek exemption under the above said provision of the E.P.F. Act and the Scheme framed thereunder.

In view of the aforementioned aspects, we find no ground to interfere with the impugned Judgment of the learned Single Judge and accordingly, we dismiss the Writ Appeal and affirm the impugned Judgment of the learned Single Judge.

There will be no order as to costs.