
(2016) 09 JH CK 0059
In the Jharkhand High Court
Case No : W.P.(L) No. 2283 of 2011

Marwari Kanwar Sangh

APPELLANT

Vs

Employees' Provident Funds Organization, EPFO, Regional
Office

RESPONDENT

Date of Decision : 02-09-2016

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 1,
Section 1(3)(b), Section 7A

Citation : (2017) 2 AIRJharR 51 : (2017) 152 FLR 318 : (2017) 1 JCR 621 :
(2017) LabLR 249

Hon'ble Judges : Aparesh Kumar Singh, J.

Bench : Single Bench

Advocate : Mr. Satish Bakshi, Advocate and Mrs. A. R. Choudhary, Advocate, for
the Petitioner; Mrs. Benani Verma, Advocate, for the EPFO; Mr. Vineet Prakash,
Advocate. Mr. Amit Kumar Verma, Advocate, for the Intervener

Final Decision : Dismissed

Judgement

Aparesh Kumar Singh, J. - Heard learned counsel for the parties.

2. The petitioner admittedly a Charitable Public Trust has been brought under the coverage of The Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as "the Act of 1952"). It is accordingly aggrieved by the impugned order dated 13.10.2010 (Annexure-6) passed by the Assistant Provident Fund Commissioner, Employees' Provident Fund Commission, Ranchi (Respondent No. 4) initiating a proceeding under Section 7A of the Act of 1952 and directing it to pay Provident Fund dues for the periods 1/1995 to 2/2010.

It is also aggrieved by the order passed in appeal by the learned Presiding Officer, Employees' Provident Fund Appellate Tribunal dated 01.07.1998 (Annexure- 4). The petitioner has also challenged the order dated 24.12.1997 (Annexure-3), passed under Section 7A of the Act of 1952 where under it has been held to be covered under the provision of Section 7A of the Act of 1952. It

has further sought for quashing of the letter no. 1904 dated 31.03.1994 (Annexure-1) issued by the Regional Provident Fund Commissioner, Bihar, Patna (Respondent No. 5) where under Dharmasala of the petitioner has been held to be covered under the provision of Act of 1952 on the ground that its establishment has been notified as a "Society".

3. The impugned orders at Annexures-3 and 4 have been passed after the matter was remanded by Hon"ble Patna High Court vide Judgment dated 30.03.1995 in CWJC No. 11411 of 1994 for a fresh hearing on the ground that the petitioner has not been accorded due opportunity of hearing. Learned counsel for the petitioner has not been able to question finding of facts recorded in the order dated 24.12.1997 (Annexure-3) passed by respondent no. 4 after remand. By the said order the respondent no. 4 has held that there were 22 employees undisputedly employed in the organisation. It has further held that the petitioner organisation is not providing any facilities free of charge. The facilities provided are in lieu of charges levied which are shown as "donation" instead of "fee". In the report of Aam Sabha of the said organisation of the year 1995, it has accepted that the visitors are offered food on concessional rates by the organisation through their dining facility. It has held the petitioner to be covered under the Classification of "Societies, Clubs or Association" notified at Sl. No. 31 of the Notification No. G.S.R. 561, Dated 23.03.1963, effective from 31.05.1963 issued under Section 1(3)(b) of the Act of 1952. In Appeal preferred by the petitioner, however, the Appellate Tribunal has found the petitioner covered under the Classification of "Hotel" as notified at Sl. No. 14 under Notification No. GSR 704, dated 16.05.1961 made effective from 30.06.1961.

4. Learned Tribunal has derived its own finding based on same evidence. It is observed that Dharmshala is not notified establishment under Section 1(3)(b) but "Hotel" is covered as item no. 15 as per Schedule. The institutions which are providing boarding and lodging facilities to pilgrims or tourists at a religious place are mostly called Dharamshala. The modern Dharamshalas which are being run by big capitalists through a Trust are providing accommodation in exchange for a decent amount, although against a receipt naming it as "donation". They are also providing foods against pre-paid coupons or against cash, may be concessional as they call it. But this activity is quite secular and economic and has nothing to do with religion because the services provided by these Dharamshalas can be and are being provided by commercial establishments. It has referred to a case of Trust administering Tirupati Balaji Temple, who is doing economic activity in relation to its sweet manufacturing establishment. On other grounds relating to the number of employees engaged in the organisation, the learned Tribunal has not differed with the finding of the original authority.

5. In order to deal with the contention of the petitioner, it is appropriate to first refer to the provisions of Section 1 of the Act of 1952 where under the case of the petitioner has been treated to be covered under the Notification issued under section 1(3)(b) of the Act as referred to herein above.

"Short title, extent and application. - (1) This Act may be called the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) Subject to the provisions contained in Section 16, it applies-

(a) to every establishment which is a factory engaged in any industry specified in Sch. 1 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.

(4) Notwithstanding anything contained in sub-section (3) of this section or sub-section (1) of section 16, where it appears to the Central Provident Fund Commissioner, whether on an application made to him in this behalf or otherwise, that the employer and the majority of employees in relation to any establishment have agreed that the provisions of this Act should be made applicable to the establishment, he may, by notification in the Official Gazette, apply the provisions of this Act to that establishment on and from the date of such agreement or from any subsequent date specified in such agreement.

(5) An establishment to which this Act applies shall continue to be governed by this Act notwithstanding that the number of persons employed therein at any time falls below twenty.

6. The grounds of challenge urged by learned counsel for the petitioner, inter alia, are as follows:

(i) The petitioner organisation is a Charitable Trust as constituted by the Trust Deed dated 20.12.1977, which has been formed with the following objectives:-

(a) Construction of building and proper management/administration for the staying of persons specially Kanwaria for coming for Puja and Darshan of Rawanewashwar Baidyanath;

(b) Making arrangement for opening of a pure vegetarian eating and breakfast for the persons putting up in the aforesaid building.

(c) Making provision for publication and selling of religious books.

(d) Make provision of a charitable dispensary and clinic for the public in general.

(e) Provision for other work relating to public welfare and for the people staying in the Dharamashala which the Trustees may consider fit and proper.

(ii) It does not fall under the classification of "societies, clubs or associations", which provide board or lodging or both or facility for amusement or any other service to any of their members or to any of their guests on payment.

(iii) As per the classification of "Societies, clubs or association" the facilities providing fooding or lodging or both or facilities for amusement for any other services are to be provided to any of their members or any of their guests on payment. It is not the case of the respondents EPFO that these facilities are extended only to the members of the petitioner ? Trust or their guests only on payment. It is open for the public at large. The expression of these classification, therefore, cannot be unduly strained to mean something which was never been the object behind the classification by the delegatee ? Central Government issuing the Notification.

(iv) Reliance has been placed in support of the aforesaid proposition on the Judgment rendered by the Hon''ble Apex Court in the case of Regional Provident Funds Commissioner, Punjab v. Shibu Metal Works reported in (1965) 2 SCR 72 : AIR 1965 SC 1076 (Para-13). Reliance has also been placed on the Judgment rendered in the case of T.B. Association of India v. Regional Provident Fund Commissioner, New Delhi and another reported in (1981)1 LLN 437 (Para-17, 19 and 25). Learned counsel has further referred to the Judgment of Rajasthan High Court in the case of Shri Jain Swetamber Nakoda Paraswnath Teerth v. Regional Provident Fund Commissioner reported in 2009 SCC OnLine Raj 29 : (2009) 2 LLN 369 [Para 9 and 11]. Reliance has also been placed on the Judgment passed by this Court in the case of Ranchi Goshala, Ranchi v. Regional Provident Fund Commissioner, Ranchi and another reported in 2004 ? III ? LLJ 428. He has also placed reliance on the case of Gandhi Vanita Ashram, Jullundur v. The Provident Fund Commissioner, Punjab, Haryana and Union Territory, Chandigarh and others reported in 1995 SCC OnLine P & H 545 : (1996) 1 LLN 966 [Para-4].

(v) Learned counsel for the petitioner submits that the Income Tax Appellate Tribunal has upheld the claim application of the petitioner on being registered as a Trust to avail all the exemptions under Section 80G of the Income Tax Act, 1961 vide its Judgment dated 11.07.2011, passed in ITA 53/Ranchi/ 2010 taking into note that the assessments furnished by the petitioner for years such as 1991, 1994, 2002 and 2006. The assessee had sought registration under Section 12AA of the Income Tax Act. Reliance has also been placed on the Judgment passed by Hon''ble Single Bench of this Court in W.P.(C) No. 7462 of 2006 dated 05.02.2007 (Annexure-4/1) on the question whether the electrical connection of the petitioner would be treated as commercial or domestic in nature, where under considering the rival submission of the parties and the stand of the respondent ? Board and the decision of the General Manager ? cum ? Chief Engineer, Electrical Supply, the connection of the petitioner was held to be commercial in nature. Reliance has further been placed on the Judgment dated 05.09.2012 rendered by learned Division Bench of this Court in petitioner's case in W.P.(T) No. 2716 of 2006 wherein it has been held to be exempted from

payment of Holding Tax under Section 84(2) of the Bihar Municipal Tax Act, 1922 as a Religious Institution registered under the provisions of Bihar Hindu Religious Trust Act, 1950.

7. Learned counsel for the petitioner submits that the entire approach of the EPF Authorities are misconceived. If the petitioner does not fall within any of the classification notified under the provisions of Section 1(3)(b) of the Act of 1952 as an establishment, it cannot be brought under the coverage of the Act of 1952 by simply stretching the meaning of the expression "Society, Clubs, Association" or "Hotels" for that matter. The question posed has been wrongly answered by the original authority as well as the learned Appellate Tribunal. In the canvas of all relevant attendant material fact, it is submitted that the petitioner organisation cannot be held to be covered under the provisions of the Act of 1952. The impugned orders are therefore liable to be set aside.

8. Learned counsel for the EPFO ? Mrs. Benani Verma submitted that the authorities concerned have taken into account the materials adduced on the basis of report of the inspecting officer as well as the reply of the petitioner and come to a finding, as referred to herein above, that the petitioner not only engages 22 employees but also charges fee, be in the nature of donation for providing any facility thereunder. None of the facilities in that sense is free. The finding of facts are neither assailed nor open to question in the present writ proceeding under Article 226 of the Constitution of India. The provision of Act of 1952 are beneficial in nature intending to ameliorate the conditions of the poor employees and a beneficial construction which advances the course of justice should be adopted. It is submitted that the petitioner organisation has never sought exemption under Section 16 and 17 of the Act of 1952 and there are no other beneficial Schemes framed by the petitioner though it has employed more than twenty employees. Learned counsel has relied upon the Judgment in the case of Shree Kutchi Visha Oshwal Mahila Mandal v. Union of India and others reported in 1993 (1) LLJ 77. Reliance has also been placed upon the nature and scope of social welfare legislations as considered by the Apex Court in the case of Maharashtra State Coop. Bank Ltd. v. Provident Fund Commissioner reported in (2009) 10 SCC 123, Para-30 more specifically. Learned counsel has further relied upon the Judgment of Division Bench of Madras High Court reported in (1974) 7 LIC 384 wherein the opinion of the Apex Court rendered in AIR 1964 SCC 980 has also been relied upon the extent and scope of Section 1(3)(b) of the Act of 1952 which are different from those establishment covered under Section 1(3)(a) of the Act of 1952 coming within the definition of the Factory. It is finally submitted that entire gamut of facts on record do not make out a case for the petitioner to be excluded from the coverage of the provisions of the Act 1952 as in the garb of carrying out activities of entertaining or providing fooding and lodging facilities to the pilgrims or travelers, they are being invariably charged without exception. As such, the provisions of the Act of 1952 should be extended to their employees to provide them coverage of beneficial legislation. Therefore, the writ petition is fit to be dismissed.

9. Learned counsel for the intervener has supported the findings of the original authority as well as appellate authority on the question of coverage of the petitioner organisation. It is submitted that there are enough materials to justify the coverage of the petitioner organisation under the provision of Section 7A of the Act of 1952. He has also drawn attention of the court to supplementary affidavit filed on their behalf. However, those materials were not before the original authority or the appellate authority while passing the impugned order. At this stage of the proceeding therefore it cannot be looked into as the petitioner management never got any opportunity to rebut the same.

10. I have considered the submission of the parties, the materials on record and gone through the Judgments relied upon. Central Government notifies "any other establishment" employing 20 or more persons or class of such establishment in the Official Gazette, which are to be covered under the Act of 1952 in terms of powers conferred under Section 1(3)(b) of the Act. These establishments are different from the establishment which are in the nature of factory engaged in any industry specified in Schedule 1 as covered under Section 1(3)(a) of the Act. Expression "any other establishment" in that sense would not be considered to limit its meaning to establishment which are only commercial in nature as no such intendment is made out on the interpretation of the aforesaid provision. In that way the fact that an organisation is registered as a Charitable Trust would not simply take it out of the coverage of the establishment if its activities on scrutiny or enquiry as per the procedure and method prescribed under the Act of 1952 brings it within the coverage of classification of any establishments under the Notification issued under Section 1(3)(b) of the Act. The finding of the original authority also referred to herein above are not made susceptible to challenge so far as number of employees are concerned. It is neither assailed on the findings that the petitioner organisation indulges in providing lodging as well as fooding facilities by charging of an amount. In that sense the facilities provided are not free though by whatsoever name they are accepted as a donation or fee. There is an activity carried out by the organisation of providing fooding facilities, may be at a concessional rate to the visitor/ pilgrims or also of stay to those who avail all those facilities. The activity of the petitioner in that sense may not come under the classification of "club, society or association" as enumerated under the Notification of the Central Government as they are not confined to the Members of the Trust or their guests. However, such activities of lodging and fooding are carried out by payment of fee or charge even if its accepted or named as a donation could certainly come under the classification of "Hotel". The activities may not be commercial in nature as the profits if any would not be appropriated by the Trustees or any one and may remain in the corpus fund of the Trust. However, there is no limitation that the establishment carrying out a charitable activity cannot be covered under the provision of the Act of 1952 if on otherwise close scrutiny of its activities it is found covered under any of the classification of establishment notified by the Central Government. The object of the Trust also need not be doubted for that matter.

What is important to be seen is whether activities of the petitioner ? Trust is carried out in a manner by engagement of 20 or more employees in its establishment which are in the nature of lodging and fooding facilities provided by a hotel also for which a fee is charged though in name of donation. Petitioner has not been able to show on facts before the inferior Tribunal that these facilities are extended free to the public at large. There is no reason why the benefits of the beneficial provision of the Act of 1952 in such case be not extended to the employees who are engaged in such an organisation though charitable in nature. On that proposition this Court is inclined to agree with the observation of the Madras High Court as relied upon by the respondents in the case reported in 1974(7) LIC 384.

11. Learned counsel for the petitioner has relied upon the Judgment rendered by the Apex Court in the case of Regional Provident Funds Commissioner, Punjab v. Shibu Metal Works (Supra) to submit that when two views are reasonably possible, the Court should prefer the view which helps achievement of the object. If the words used in the entry are capable of a narrow or broad construction, each construction reasonably possible and it appears that broad construction would help the furtherance of the object, then it would be necessary to prefer the said construction. This rule postulates that there is a competition between the two constructions, each one of which is reasonably possible. This rule does not justify the straining of the words or putting an unnatural or unreasonable meaning on them just for the purpose of introducing a broader construction.

In the facts of the present case one is not required to strain the construction of the expression "Hotel" under which the petitioner has been held to be covered as an establishment by the learned Appellate Tribunal. In the underlying undisputed facts the activities carried out in providing lodging as well a fooding facilities is not free by the petitioner ? Trust but invariably coupled with charging of an amount whether it is accepted as a donation or fee. Therefore, there is no reason to strain the meaning of the expression "Hotel" which is an establishment envisaged under the Notification issued under Section 1(3)(b) of the Act of 1952 whose primary activity is to provide not only boarding and lodging facilities but also food at a price which is not extended free but for a charge.

As per the Law Lexican by P. Ramanatha Aiyer, a "Hotel is a place where proprietor makes it his business to furnish food or lodging or both, to travelers or other persons". The petitioner may strictly not fall into the classification of "society, clubs or association" which provide facilities of fooding or lodging or both or facilities for amusement or for any other service to any of their members or any of their guests on payment. But if an activity of providing fooding and lodging is provided by charging an amount and not for free by the petitioner in whatever name may it be, then there is no reason why the petitioner's activity should not be covered under the expression "Hotel" simply on account of the fact that it is registered as a charitable trust. It is not necessary that the amount charged may not be apportioned amongst the trustees as profit in the nature of

commercial establishment. However, as has been noted herein above, the language used under Section 1(3)(b) of the Act of 1952 cannot be considered to limit its meaning to establishment which are only commercial in nature.

12. The petitioners have relied upon the Judgment rendered by the Delhi High Court in the case of T.B. Association of India v. Regional Provident Fund Commissioner, New Delhi and another in support of their contention. The said establishment which was already operating Provident Fund Scheme governed by Provident Fund Act, 1925 was sought to be covered as an establishment within the meaning of the expression "all establishments, clubs, association which render service to their members" by Notification issued by Central Government dated 16th November, 1974 under Section 1(3)(b) of the Act of 1952. The learned court on scrutiny of the language of the expression used in the coverage Notification came to a finding that T.B. Association of India is not an association which renders service to its members, it renders service to the public as per its principal object under the byelaws registered under the Society Registration Act, 1860. Therefore, it cannot be asked to subscribe to the Scheme of the Act of 1952. The aforesaid Judgment, therefore, does not support the petitioner's case.

13. Similarly, in the Judgment rendered by learned Single Bench in the case of Shri Jain Swetamber Nakoda Paraswnath Teerth v. Regional Provident Fund Commissioner reported in 2009 SCC OnLine Raj 29 : (2009) 2 LLN 369 it was held that the petitioner did not fall under the classification of "societies, clubs or associations", which provide boarding or lodging or both or facility for amusement or any other service to any of their members or to any of their guests on payment basis to the petitioner ? Trust which has 600 ? 800 years old temple trust. The said Judgment also would not be of help to the petitioner on the same reasonings.

14. In the case of Ranchi Goshala, Ranchi v. Regional Provident Fund Commissioner, Ranchi and another relied upon by the petitioners, the learned Single Judge of this Court upon scrutiny of the facts of the case came to the finding that the Assistant Provident Fund Commissioner, Ranchi had held that the petitioner is selling milk. There was no indication given that petitioner is engaged in the process of manufacture of curd, butter, butter-milk or ghee or pasteurising the milk or treating the milk for packaging. There is nothing on the record to suggest that the petitioner is in any way conducting ? manufacturing process or that it can be said to be a manufacturer to be covered under the provisions of Factory notified under Schedule-I under Section 1(3)(a) of the Act of 1952. Learned Single Judge, however, while setting aside the order passed under Section 7-A of the Act of 1952, bringing the petitioner ? Ranchi Goshala, Ranchi within the coverage of the Act, however made it clear that the respondents can proceed in accordance with law if there is any report to suggest that petitioner is a manufacturer. The petitioner's case, therefore, are distinguishable specifically on findings of fact noticed herein above from the cases relied upon by him.

15. On the other hand it would be profitable to draw reliance on the opinion of

the Apex Court in matters of construction of a beneficial piece of social welfare legislation aimed at securing the well being of the employees. The consistent view in matters of interpretation in respect of such legislation such as Employees' State Insurance Corporation Act or Employees' Provident Fund and Miscellaneous Provisions Act is that the Courts should not adopt a narrow interpretation which will have the effect of defeating object of the Act. It would only be appropriate, therefore, to quote extract of the Judgment on the point rendered upon by the Apex Court in the case of Delhi Gymkhana Club Limited v. Employees' State Insurance Corporation reported in (2015) 1 SCC 142.

"17. The appellant Club is catering to the elite people of Delhi. The appellant Club provides various services to its members and organises several sports activities. Wide range of activities of the Club are associated with the large number of staff. Kitchen is an integral part of the Club which caters to the needs of its members and their guests, on payment of money either in cash or by card, where the food items are put for sale, thereby making the appellant Club fall within the definition of "factory" under Section 2(12) of the ESI Act. All the persons employed for the purpose of supply and distribution of food prepared in the kitchen and for doing other incidental duties in connection with the kitchen and catering are to be regarded as employees of the factory. It hardly matters for the employee whether the appellant's kitchen is run with any profitmaking motive or not.

18. The object of the ESI Act is to provide certain benefits to the employees in case of sickness, maternity and employment injury and also to make provision for certain other matters in relation thereto. The ESI Act is a beneficial piece of social welfare legislation aimed at securing the well-being of the employees and the court will not adopt a narrow interpretation which will have the effect of defeating the objects of the Act.

19. In Bombay Anand Bhavan Restaurant v. ESI Corpn. in para

20 it has been held as under:-

"20. The Employees' State Insurance Act is a beneficial legislation. The main purpose of the enactment as the Preamble suggests, is to provide for certain benefits to employees of a factory in case of sickness, maternity and employment injury and to make provision for certain other matters in relation thereto. The Employees' State Insurance Act is a social security legislation and the canons of interpreting a social legislation are different from the canons of interpretation of taxation law. The courts must not countenance any subterfuge which would defeat the provisions of social legislation and the courts must even, if necessary, strain the language of the Act in order to achieve the purpose which the legislature had in placing this legislation on the statute book. The Act, therefore, must receive a liberal construction so as to promote its objects."

The same principle was reiterated in Transport Corpn. of India v. ESI Corpn. and Cochin Shipping Co. v. ESI Corpn.

20. Even though the term "kitchen", "catering" of a club may not be called a factory in common parlance, having regard to the definition of "manufacturing process" and that the ESI Act is a beneficial legislation, a liberal interpretation has to be adopted. Therefore, so long as manufacturing process is carried on with or without the aid of power by employing more than twenty persons for wages, it would come within the meaning of "factory" as defined under Section 2(12) of the ESI Act. The contention that the appellant Club is a non-profit-making organisation would not take away the same from the purview of the Act.

21. In *Bangalore Turf Club Ltd. v. ESI Corpn.* the question which was referred to a larger Bench was "whether the Bangalore Turf Club Ltd. being engaged in organising sports activities which involves providing of service to the members of the Club and outsiders can be construed as a "shop" for the purpose of extending the benefits under the ESI Act". Referring to *Cochin Shipping Co. v. ESI Corpn.* and *Bombay Anand Bhavan Restaurant v. ESI Corpn.*, in paras 65 and 66, it was held as under: (*Bangalore Turf Club Ltd. case*, SCC pp. 688 ? 89).

"65. It has consistently been the stand of the appellants herein, that the term "shop" must be understood in its "traditional sense". However, as has been observed by this Court in *Bombay Anand Bhavan Restaurant*, the language of the ESI Act may also be strained by this Court, if necessary. The scheme and context of the ESI Act must be given due consideration by this Court. A narrow meaning should not be attached to the words used in the ESI Act. This Court should bear in mind that the ESI Act seeks to insure the employees of covered establishments against various risks to their life, health and well-being and places the said charge upon the employer.

66. We find that the term "shop" as urged to be understood and interpreted in its traditional sense would not serve the purpose of the ESI Act. Further, in light of the judgments discussed above and in particular *Cochin Shipping case* and *Bombay Anand Bhavan case*, this Court is of the opinion that an expansive meaning may be assigned to the word "shop" for the purposes of the ESI Act. As has been found above, the activities of the appellant Turf Clubs is in the nature of organised and systematic transactions, and further that the said Turf Clubs provide services to members as well as public in lieu of consideration. Therefore, the appellant Turf Clubs are a "shop" for the purpose of extending the benefits under the ESI Act."

22. In *ESI Corpn. v. Hyderabad Race Club*, this Court has clarified that a club will be coverable under the ESI Act. In *Cricket Club of India v. ESI Corpn.*, the Bombay High Court has held that the ESI Act will apply to a club since there was no distinction between a hotel and a club. In *ESI Corpn. v. Jalandhar Gymkhana Club*, the Punjab and Haryana High Court considered the question whether manufacturing process is being carried on in the kitchen of the club, rendering catering services to its members. It was held that a perusal of sub-clauses (i) to (vi) of Section 2(k) of the Factories Act would make it clear that preparation of the items which are prepared in the kitchen and the preservation and storing of

any articles in the cold storage would amount to a manufacturing process."

The Apex Court has in the aforesaid Judgment consciously held that it hardly matters for the employee whether the appellant's kitchen is run with any profit-making motive or not. It has also held that in the case of *Bangalore Turf Club Ltd. v. ESI Corporation* reported in (2014) 9 SCC 657, that the term "shop" must not be understood in its "traditional sense" and a narrow meaning should not be attached to the words used in the ESI Act bearing in mind that the ESI Act seeks to insure the employees of covered establishments against various risks to their life, health and well-being and places the said charge upon the employer.

The Apex Court in the case of *Cochin Shipping Co. v. ESI Corporation* and in the case of *Bombay Anand Bhavan Restaurant v. ESI Corporation* (Supra) was of the opinion that an expansive meaning must be assigned to the word "shop" for the purpose of ESI Act.

Further the opinion of the Bombay High Court in the case of *Cricket Club of India v. ESI Corporation*, was also noted with approval wherein it was held that ESI Act will apply to a Club since there was no distinction between a hotel and a club in light of the fact that the Club also renders catering service to its members and there was a manufacturing process carried out in the kitchen employing more than 20 persons. Such beneficial legislations have been enacted to realise State's obligation in safeguarding the rights provided under Part-IV of the Constitution.

16. The EPF Act being a social welfare legislation is intended to protect the interest of a weaker section of the society i.e. the workers employed in factories and other establishments. Therefore a liberal and purposive interpretation of such beneficial legislation should be accorded keeping in view the directive principles of State Policy contained in Articles 38 and 43 of the Constitution of India. In this context, the opinion of Apex Court in the case of *Employees Provident Fund Commissioner v. Official Liquidator of Esskay Pharmaceuticals Limited* reported in (2011) 10 SCC 727 [Relevant para-22 to 24] are profitably quoted hereunder:-

"22. The EPF Act is a social welfare legislation intended to protect the interest of a weaker section of the society i.e. the workers employed in factories and other establishments, who have made significant contribution in economic growth of the country. The workers and other employees provide services of different kinds and ensure continuous production of goods, which are made available to the society at large. Therefore, a legislation made for their benefits must receive a liberal and purposive interpretation keeping in view the directive principles of State Policy contained in Articles 38 and 43 of the Constitution.

23. In *Organo Chemical Industries v. Union of India* this Court negated the challenge to the constitutionality of Section 14-B of the EPF Act. In the main judgment delivered by him, A.P. Sen, J. referred to the Statement of Objects and Reasons contained in the Bill presented before Parliament, which led to the

enactment of Amendment Act 40 of 1973 and observed: (SCC p. 586, para-23).

"23. .. ? Each word, phrase or sentence is to be considered in the light of general purpose of the Act itself. A bare mechanical interpretation of the words "devoid of concept or purpose" will reduce most of the legislation to futility. It is a salutary rule, well established, that the intention of the legislature must be found by reading the statute as a whole."

24. In his concurring judgment, Krishna Iyer, J. observed: (Organo Chemical Industries case, SCC pp. 591 ? 92, paras 40-41)

"40. The measure was enacted for the support of a weaker sector viz. The working class during the superannuated winter of their life. The financial reservoir for the distribution of benefits is filled by the employer collecting, by deducting from the workers' wages, completing it with his own equal share and duly making over the gross sums to the fund. If the employer neglects to remit or diverts the monies for alien purposes the fund gets dry and the retirees are denied the meagre support when they most need it. This prospect of destitution demoralises the working class and frustrates the hopes of the community itself. The whole project gets stultified if employers thwart contributory responsibility and this wider fall-out must colour the concept of "damages" when the court seeks to define its content in the special setting of the Act. For, judicial interpretation must further the purpose of a statute. In a different context and considering a fundamental treaty, the European Court of Human Rights, in Sunday Times case, observed:

"The Court must interpret them in a way that reconciles them as far as possible and is most appropriate in order to realise the aim and achieve the object of the treaty."

41. A policy ? oriented interpretation, when a welfare legislation falls for determination, especially in the context of a developing country, is sanctioned by principle and precedent and is implicit in Article 37 of the Constitution since the judicial branch is, in a sense, part of the State. So it is reasonable to assign to "damages" a larger, fulfilling meaning."

17. This Court is, therefore, persuaded to take a view which advances a broader construction of the provisions of the beneficial legislation like EPF Act in context of undisputed finding of fact recorded in respect of activities carried out by the petitioner organisation by providing lodging as well as fooding facilities by charging an amount and not for free from the general public, though it has been constituted as "Trust" under the provisions of Bihar Hindu Religious Trust Act, 1950

18. The learned Tribunal in its impugned order has also taken note of the fact that institutions providing boarding and lodging facilities to pilgrims or tourists at a religious place are called Dharamshala which provide accommodation in exchange for a decent amount although against a receipt naming it as a

"donation". Petitioners are providing food against pre-paid coupons or against cash, may be concessional as they call it. Its activity is therefore quite secular and economic and the services provided by these Dharamshala are also being provided by commercial establishment. It has also referred to the Trust administering Tirupati Balaji Temple which is doing economic activity in relation to sweet manufacturing establishment.

19. It would not be out of place to advert to one of the grounds urged by counsel for the respondents ? EPFO that this petitioner organisation has not been able to show that any exemption was granted to it under the provision of Sections 16 and 17 of the Act of 1952 by the Central Government. It would be useful to refer to the Notification issued on 14th May, 2010 where under certain establishment registered under the Society Registration Act or those being run by public, religious or charitable trust or endowments enumerated therein or societies and trusts for religious or charitable or other public purposes were exempted for a period up to 31st March, 2015 with effect from 1st April, 2010 under Section 16(2) of the Act of 1952 under S.O. No. 1431. The said Notification published in the Gazette of India weekly, Sl. 22, New Delhi, May 23 ? May 29, 2010 is quoted hereunder for better appreciation.

"S.O. 1431 ? In exercise of the powers conferred by sub-section (2) of section 16 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), the Central Government, being of opinion that having regard to the circumstances of certain establishments registered under the Societies Registration Act, 1860 (21 of 1860), or under any other corresponding law for the time being in force it is necessary and expedient so to do, hereby exempts the following class of establishments from the operation of the said Act for a period upto the 31st March, 2015 with effect from the 1st April, 2010.

(a) those being wholly financed by the grants-in-aid received from the Central Government, or any State Government or State Government, partly by the Central Government and partly by one or more State Governments subject to the condition that grants-in-aid does not include any amount for the purpose of meeting the liability of the employer towards the employers' contribution to the provident fund or

(b) those being run by public, religious or charitable trusts or endowments (including maths, temples, gurudwaras, wakfs, churches, synagogues, agiaries or other places of public religious worship) or societies and Trusts for religious or charitable or other public purposes and notified as such by the Central Government under the Income Tax Act, 1961 (43 of 1961).

2. Provided that if such class of establishments run any university, any college, any school, any scientific institution, any institution in which research education, imparting knowledge or training is carried on against charges or fees from the students, or run any hospital, nursing home or clinic in which any medical treatment or procedure is carried on against charges or fees from the patients,

such activity shall not be exempted from the operation of the first mentioned Act.

3. Provided that the Government reserves the right to revoke and/ or modify the exemption as and when it is deemed fit."

On secession of period of exemption, the EPFO, Ministry of Labour, Government of India, has issued instruction contained in Letter No. Coord./1(1)2010/ Notification u/s 16(2) Dated 7th September, 2015 which reads as under:

"The Central Government in exercise of its power under section 16(2) of the Employees' Provident Funds & Miscellaneous Provisions Act, 1952 exempted from the operations of the Act to certain establishments fulfilling terms & conditions as specified in Notification No. S.O. 1431 dated 14.05.2010 upto 31.03.2015.

2. The Central Government has decided not to extent the grant of exemption to these establishments and, consequently, all such establishments have come under the purview of the Act w.e.f. 01.04.2015.

3. You are now therefore directed to extend the social security benefits under the Act to all eligible employees of such establishments w.e.f. 01.04.2015 and take necessary actions with regard to ensuring compliance with the provisions of the Act by all such establishments."

It is evident from perusal of the aforesaid Notification No. SO 1431 and the letter dated 7th September, 2015 that before 1st April, 2010 and from 1st April, 2015, such establishments were and are covered under the provisions of Act of 1952. This, therefore, answers the contention of the petitioner that it being registered as a charitable trust, would not fall within the nature of establishment covered as an establishment under Section 1(3)(b) of the Act of 1952 if its activities warrants it to be brought under the coverage of such classification.

20. In that way registration of the petitioner as a Charitable Trust under the provisions of Income Tax Act for grant of exemption under Section 80G of the Income Tax Act, 1961 or for that matter the declaration that it is exempted from paying holding tax under the provisions of the Bihar and Orissa Municipal Act, 1922 or even that the electrical connection of the petitioner is to be treated in the nature of domestic connection would not come to its aid to be excluded out of the purview of the beneficial provision of 1952 in view of the finding recorded in the original order and in the appellate order.

21. In totality of the facts and circumstances and for the reasons stated herein above, this Court does not find any infirmity in the order of the learned Tribunal holding the petitioner covered under the classification of "Hotel" for the purpose of the Act of 1952.

22. This writ petition is accordingly dismissed.