

(2012) 02 KAR CK 0065

In the Karnataka High Court

Case No : Writ Petition No"s. 23078-79 of 2011 (L-PF)

M/s. Shell India Markets Pvt. Ltd. and Mr. Anabil Dutta

APPELLANT

Vs

The Central Provident Fund Commissioner Bhavishya Nidhi
Bhawan, 14, Bikaji Cama Place, New Delhi - 110066, The
Regional Provident Fund Commissioner Sub Regional Office,
Whitefield, 36, Lakshmi Complex, NH-4, Old Madras Road,
K.R. Puram, Bangalore - 560036, The Assistant Provident
Fund Commissioner Sub Regional Office, Whitefield, 36,
Lakshmi Complex, NH-4, Old Madras Road, K.R. Puram,
Bangalore - 560036 and The Secretary Ministry of labour
Government of India Shram Shakti Bhavan, Rafi Marg, New
Delhi - 110001

RESPONDENT

Date of Decision : 10-02-2012

Acts Referred:

Constitution of India, 1950 — Article 19 (6), 19 (g)
Employees Provident Fund and Miscellaneous Provisions Act, 1952 — Section 17, 17
(2), 5

Citation : (2012) 133 FLR 735 : (2012) ILR (Kar) 2716 : (2012) 3 KarLJ 313 :
(2012) 3 LLJ 686

Hon'ble Judges : Aravind Kumar, J

Bench : Single Bench

Advocate : S.N. Murthy, for Sriyuths Siddappa, Sunil and Nitin, for the
Appellant; Harikrishna S. Holla, Advocate for R-1 to R-3, Sri. Kalyan Basavaraj,
Assistant Solicitor General of India for R-4, for the Respondent

Judgement

Aravind Kumar

1. Petitioner is seeking for issue of writ of certiorari and to quash Item No. 25 of Appendix -A to Paragraph 27AA of the EPF Scheme as being ultra vires of Section 17(2) of Employees Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as "Act" for the sake of brevity) and in violation of Article 19(g) of the Constitution of India and for a further direction to quash the withdrawal order dated 01.06.2011 Annexure-L and a mandamus to 3rd

respondent to consider the revised application dated 23.09.2009 Annexure-F of the petitioner for the purpose of exemption as per section 17(2) of the Act. Heard Sri. S.N. Murthy, learned senior counsel on behalf of the petitioner and Sri. Harikrishna S. Holla, learned counsel appearing for respondents 1 to 3 and Sri. Kalyan Basavaraj, learned Assistant Solicitor General of India appearing on behalf of fourth respondent. Perused the impugned order and Annexures filed along with the writ petition as also the statement of objections filed by the respondents 1 to 4.

2. It is contended by Sri. S.N. Murthy, learned senior counsel that petitioner No. 1 has created its own Trust which is beneficial comparatively more beneficial to its employees than provided under the scheme and as such exemption of the applicability of the Act was sought for and said application has been forwarded to the fourth respondent by second respondent and as an interim measure relaxation order came to be issued by Provident Fund Commissioner exempting the petitioner establishment from the purview of the Act in exercise of the power conferred under paragraph 79 of the Scheme and later on same has been withdrawn on the ground that condition No. 25 of Appendix A has been violated by the petitioner which according to him is erroneous, illegal and arbitrary. He further contends that imposition of condition No. 25 of Appendix-A is ultra vires of Section 17(2) of the Act and such condition is not contemplated under the Act and any condition should fall within section 17A of the Act and imposing of such condition is beyond the scope of delegated legislation and as such it is unreasonable. He would further elaborate his submissions by contending that it is violative of Article 14 since there is no rational nexus between the obligation of the first petitioner to make contribution vis-a-vis the loss it may suffer for three consecutive years and withdrawal of exemption granted u/s 17(2). He would also contend that condition No. 25 found in Appendix A which is made as a part of condition for grant of exemption u/s 17(2) of the Act read with paragraph 27A of the scheme is a restriction to carry on business and violative of Article 19(g) of the Constitution of India and it is a unreasonable restriction and not in public interest as required under Article 19(6) of the Constitution of India. He would contend that respondent No. 2 has no power to withdraw the relaxation order that too on the ground that condition No. 25 of Appendix A has not been complied, on the ground that granting or refusing an exemption is a matter to be decided by the appropriate government i.e. 4th respondent and said issue cannot be decided while considering prayer for grant of relaxation order. He would contend that after granting relaxation order the power of the Provident Fund Commissioner gets exhausted and except forwarding the application filed seeking exemption to the appropriate government 2nd respondent has no other role to play and as such he contends that revocation of relaxation is without authority of law. He would also contend that sufficient safe guards are provided under the Act to ensure the establishment which has been granted exemption would comply the same by imposing conditions as enumerated in Appendix-A and same would protect the interest of the employees. On these grounds he seeks for allowing of

the Writ Petition.

3. Per contra, Sri. Harikrishna S. Holla, learned counsel appearing on behalf of respondents 1 to 3 submits that under paragraph 79 of the scheme, Commissioner is empowered to pass a relaxation order in respect of which an application for exemption u/s. 17 of the Act has been received and on account of such relaxation having been given it was found that financial condition of the petitioner was not sound and as such, the respondent was justified in cancelling the relaxation order. He further submits that as and when the financial position of the petitioner improves, they are at liberty to approach respondent seeking relaxation - exemption as per the provisions of the Act. It is contended that on the basis of various documents submitted relaxation order was granted and on coming to know that financial condition of the petitioner - Company is not sound and it has been suffering continuous loss, respondent decided to withdraw the relaxation order granted and as such there is no illegality or arbitrariness in the said action. He would contend that petitioner has been granted relaxation under paragraph 79 which would be subject to terms and conditions as specified in Appendix-A, since paragraph 27AA specifies so. He would submit that in order to safeguard the interests of the employees, respondent has chosen to withdraw the relaxation order after following principles of natural justice. Hence, he prays for dismissal of the Writ Petition.

4. Sri. Kalyan Basavaraj, learned Assistant Solicitor General appearing for the 4th respondent would contend that ground of constitutional validity challenged by the petitioner is unsustainable since no ground has been made out to question the correctness of subordinate legislation and pursuant to amendment brought to EPF Act by Section 5(1), the scheme has been brought about and same being subordinate legislation the constitutional validity is to be presumed unless rebutted with cogent reasons and he would elaborate his submission contending that no such rebuttal presumption has been established by petitioner in the instant case. He would contend that EPF Act and the Scheme are compliment to each other and should not be read in isolation and paragraph 27AA was brought to protect the social security interest of the working class and it is well within the delegated legislation and the financial liability of the employer is a relevant factor since losses if any made by the establishment it would not be possible for them to honour the financial commitments prescribed under law resulting in prejudice to the employees. He contends that financial capacity of the company is very much linked to the ability of the company to comply with the provisions of the Act. On these grounds he submits that provision be held as constitutionally valid.

5. Having heard the learned Advocates appearing for parties, I am of the view that following points arise for my consideration:

(1) Whether condition No. 25 of Appendix A is ultra vires and violative of Article 14 and Article 19 (g)&(6) of Constitution of India?

(2) Whether the withdrawal order passed by second respondent dated

01.06.2011 (Annexure L) is to be sustained or quashed?

(3) What order?

RE: POINT NO. 1 :-

6. It has been contended that condition No. 25 of Appendix A is violative of Article 14 of Constitution of India since there is no rational nexus with the object sought to be achieved in as much as obligation of the establishment to make contributions to the fund is mandatory irrespective of the profitability of the company and as such the exemption granted u/s 17(2) of the Act cannot be withdrawn when an establishment reports loss for three consecutive years.

7. u/s 17 of the Act the appropriate Government is empowered to exempt either prospectively or retrospectively from the operation of all or any provisions of any scheme in relation to an establishment as provided thereunder. Paragraph 27A of the scheme empowers the appropriate Government to order exemption in respect of an establishment the operation of all or any provisions of the scheme and paragraph 27AA specifies the terms and conditions under which exemptions are to be granted which again is referable to Appendix A. Under Appendix A conditions to be imposed while granting exemption u/s 17 of the Act are enumerated from 1 to 30.

8. The EPF Scheme is formulated by the "appropriate Government" in exercise of its power u/s 5 of the Act. The said scheme being a subordinate legislation the power has been derived from the enabling Act namely EPF Act and particularly section 5. While considering the vires of a subordinate legislation the presumption is that it is intra vires. For this proposition the Judgment of the Apex Court in the case of St. Johns Teachers Training Institute Vs. Regional Director, National Council for Teacher Education and Another, can be seen whereunder it is held as under:

12. The question whether any particular legislation suffers from excessive delegation has to be decided having regard to the subject-matter, the scheme, the provisions of the statute including its preamble and the facts and circumstances in the background of which the statute is enacted. (See Registrar of Co-op. Societies Vs. K. Kunjabmu and State of Nagaland Vs. Ratan Singh) It is also well settled that in considering the vires of subordinate legislation one should start with the presumption that it is intra vires and if it is open to two constructions, one of which would make it valid and the other invalid, the courts must adopt that construction which makes it valid and the legislation can also be read down to avoid its being declared ultra vires.

It is also to be noticed that when subordinate legislation is under consideration and if it is open to two constructions, namely, one of which would make it bad and the other good, courts would adopt the constructions which makes it good and for this proposition the judgment of the Hon'ble Supreme Court in the case of K. Anjaiah and Others Vs. K. Chandraiah and Others, can be looked into

whereunder it is held as under:

7. In view xxxx Constitution. Further it is the duty of the Court to harmoniously construe different provisions of any Act or Rule or Regulation, if possible, and to sustain the same rather than striking down the provisions out right. In other words the Court has to make an attempt to see if the different provisions of the Regulation can survive and in making that attempt it is open for the Court to read down a particular provision to clarify any ambiguity so that the provisions can be sustained but not to re-legislate a provision. This being the parameters under which a Court is required to scrutinise the provisions of any Act or Regulation when the same is challenged.

The subordinate legislation cannot over ride the provisions of Act either by exceeding the authority or by making provisions inconsistent with the provisions of the Act. A subordinate legislation would be struck down if it is arbitrary and if it fails to take into account very vital facts which either expressly or by necessary implication are required to be taken into consideration by the Statute or the Constitution and this can be done only on the ground that it does not conform to the statutory or constitutional requirements, but not merely on the ground that it is not reasonable or that it has not taken into account which the court considers relevant. In other words delegated legislation can be struck down only if there is manifest arbitrariness or unreasonableness. If the provision is to be found partial and unequal in its operation between classes, if they are manifestly unjust, if they disclose bad faith, and can find no justification in the minds of ordinary reasonable men, then court will say that Parliament never intended to give authority to make such rules and they are unreasonable and ultra vires and not otherwise.

9. Keeping these principles in mind when the provision in question namely condition No. 25 of Appendix A which is questioned in this Writ Petition as ultra vires is examined the irresistible conclusion one has to draw is that it does not impose any unreasonable restriction on the establishment which seeks exemption u/s 17. It is admitted position of law that to claim exemption, it is not a matter of right, but it would flow from the statute. Thus u/s 17 of the EPF Act, the establishment can seek exemption with regard to application of the provisions of the Act and scheme either of all or any provisions of the scheme. When exemption is sought for the appropriate Government would examine as to whether the fund that would be created by an establishment is more favourable to its employees than the benefits provided under this Act and on being satisfied about such Scheme being more beneficial to the employees of an establishment exemption is granted. Under condition No. 25 of Appendix A loss for three consecutive financial years are erosion in their capital base attracts withdrawal of exemption. This condition imposed under the delegated legislation cannot be construed either to be arbitrary or unreasonable for reasons more than one: (i) In the event of an establishment not being granted exemption the provisions of the Act and the scheme would be made applicable to the concerned

establishment and the authorities under the Act would be in a position to monitor the payment by an establishment within the time schedule namely as prescribed under the scheme and failure to deposit within the stipulated time suitable immediate remedial as also punitive action would be taken and authorities under the Act would not allow the establishment to continue to default, (ii) In the case of an establishment which has been granted exemption would be in its realm to make deposits to its own fund created for that purpose exclusively and authorities would not be in a position to monitor as to whether such deposits are made or otherwise and as such to have checks and balances several conditions under Appendix A has been stipulated and one such condition is recurring loss of the establishment for three consecutive years. The subordinate legislation has ensured and taken into consideration that financial loss of an establishment for three consecutive financial years would entail in withdrawal of exemption and not intermittent losses which may occur in any given circumstances in respect of any establishment. In that view of the matter, I am of the considered view that condition No. 25 found in Appendix-A cannot be held as ultra vires. On the other hand, it has to be held as intra vires. Accordingly point No. 1 is answered against the petitioner and in favour of the respondents.

RE: POINT NO. 2:-

10. A perusal of the impugned order as also Annexures appended to the writ petition, would disclose that petitioner No. 1 has constituted a Provident Fund Trust for its employees and it is stated that it is advantageous to the employees in terms of its working than the scheme provided under the Act and employees of the first petitioner are also best protected by its Trust. In pursuance thereof, an application dated 26.06.2009 was submitted to the fourth respondent u/s 17(2) of the Act and Paragraph 27A of the Scheme requesting for grant of exemption with effect from 01.07.2009. Thereafter another application was submitted on 28.7.2009 seeking grant of relaxation order under Paragraph 79 of the Scheme with effect from 01.07.2009. Said application was revised and another application was submitted on 23.09.2009 seeking relaxation from 01.09.2009 instead of 01.07.2009. The 2nd respondent authority on considering these applications passed a relaxation order dated 13/14.10.2009 and exempted the petitioner from the purview of the EPF Scheme with effect from 01.09.2009 by stipulating the conditions thereunder. In the meanwhile, the 2nd respondent is said to have forwarded the application for grant of exemption submitted by the petitioner under paragraph 27A of EPF Scheme read with section 17(2) of the Act to the 4th respondent. Petitioner No. 1 claims to have been regularly depositing to its Fund the contributions without any default pursuant to the relaxation order. The funds maintained with the second respondent has been transferred to the funds managed by the first petitioner - Trust for its employees numbering about 2,600 (approximately). These facts are not in dispute.

11. A show cause notice dated 04.02.2011 Annexure-J was issued to the petitioner stating that petitioner had failed to comply with condition No. 25 of

paragraph 27 of the EPF Scheme and petitioner No. 1 was called upon to show cause as to why the relaxation order should not be withdrawn. The said Show Cause Notice came to be replied by the first petitioner by reply dated 15.03.2011 as per Annexure-K. Thereafter, withdrawal of relaxation order came to be passed on 01.06.2011 at Annexure-L.

12. It is not in dispute that applications submitted by petitioner No. 1 on 26.6.2009 and 23.9.2009 Annexures-D and F seeking exemption u/s. 17(2) of the EPF Act has been forwarded by 2nd respondent to 4th respondent and it is also not disputed that these applications submitted by petitioner No. 1 have not been rejected or allowed and admittedly it is still under consideration before the 4th respondent.

13. Show Cause Notice dated 4.2.2011 at Annexure-J has been issued by 2nd respondent to the 1st petitioner stating that where exemption is to be granted u/s. 17 of the Act or paragraph 27A of the scheme would be subject to the terms and conditions as given in Appendix-A of paragraph 27AA of the scheme. It is also further stated therein that condition No. 25 of Appendix-A of paragraph 27AA stipulates that "a company reporting loss for three consecutive financial years or erosion in their capital base shall have their exemption withdrawn from the first day of the next succeeding financial year". It has been contended by 2nd respondent that compliance audit of the exempted Trust was conducted and the report of the squad was enclosed with the copy of the balance sheet of first petitioner for the years ending 31.3.2008, 31.3.2009 and 31.3.2010 and it was found that company had incurred loss in all the three years. On this ground Show Cause Notice has been issued. The learned counsel for petitioner has contended that there is no power to withdraw the relaxation order on the ground that condition No. 25 of Appendix A has not been complied and there is no such power available to the authority who has issued the relaxation order to withdraw the relaxation. Learned counsel appearing for respondents 1 to 3 would draw the attention of the court to paragraph 27AA of the scheme to contend that all exemptions already granted or to be granted u/s. 17 of the Act or under paragraph 27A of the scheme would be subject to terms and conditions as given in Appendix-A.

14. In view of these rival contentions, it would be necessary to extract the relevant provisions governing the exemption namely section 17(2), Paragraph 27A, 27AA, 79 and condition No. 25 of Appendix-A

17. Power to exempt. - (1) The appropriate Government may, by notification in the official gazette, and subject to such conditions as may be specified in the notification, exempt, whether prospectively or retrospectively from the operation of all or any provisions of any Scheme -

(a) xxx

(b) xxx

(1A) xxx

(1B) xxx

(1C) xxx

(2) Any Scheme may make provision for exemption of any person or class of persons employed in any establishment to which the Scheme applies from the operation of all or any of the provisions of the Scheme, if such person or class of persons is entitled to benefits in the nature of provident fund, gratuity or old age pension and such benefits, separately or jointly, are on the whole not less favourable than the benefits provided under this Act or the Scheme:

Provided that no such exemption shall be granted in respect of a class of persons unless the appropriate Government is of opinion that the majority of persons constituting such class desire to continue to be entitled to such benefits.

27A. Exemption of a class of employees

(1) The appropriate Government may by order and subject to such conditions as may be specified in the order exempt from the operation of all or any of the provisions of this Scheme any class of employees to whom the Scheme applies:

Provided that such class of employees is entitled to benefits in the nature of provident fund, gratuity or old age pension according to the rules of the factory or other establishment and such benefits separately or jointly or on the whole not less favourable than the benefit provided under the Act and this Scheme.

(2) Where any class of employees is exempted as aforesaid, the employer shall in respect of such class of employees maintain such account, submit such returns, provide such facilities for inspection, pay such inspection charges and invest provident fund collections in such manner as the Central Government may direct.

(3) A class of employees exempted under subparagraph (1) or the majority of employees constituting such class may by an application to the Commissioner make a declaration that the class desires to join the Fund and thereupon such class of employees shall become members of the Fund.

(4) No class of employees shall be granted exemption or permitted to apply out of exemption more than once on each account.

(5) The provisions of this paragraph shall be deemed to have come into force with effect from the 14th of October, 1953.

27AA. Terms and conditions of exemption

All exemptions already granted or to be granted hereafter u/s 17 of the Act or under paragraph 27A of the scheme shall be subject to the terms and conditions as given in the Appendix A.

79. Special provisions relating to factories and other establishments in respect of which applications for exemption are received-

Notwithstanding anything contained in this Scheme, the Commissioner may, in relation to a factory or other establishment in respect of which an application for exemption u/s 17 of the Act has been received, relax pending the disposal of the application the provisions of this Scheme in such manner as he may direct.

Appendix-A

REVISED CONDITIONS FOR GRANT OF EXEMPTION u/s 17 OF EMPLOYEES' PROVIDENT FUNDS AND MISCELLANEOUS PROVISIONS ACT, 1952

The following are the revised conditions for grant of exemption u/s 17 of Act, 1952:-

1. xxx

2. xxx

3. xxx

25. A company reporting loss for three consecutive financial years or erosion in their capital base shall have their exemption withdrawn from the first day of the next/succeeding financial year.

15. A conjoint reading of all these provisions would go to establish that "appropriate Government" as defined u/s. 2(a)(1) is empowered to exempt whether prospectively or retrospectively from the operation of all or any of the provisions of any scheme as envisaged under sub-Section (1) and (2) of the Act. In the instant case, the application was submitted by 1st petitioner under sub-section (2) of section 17 and as such, the finding in this writ petition is confined to sub section (2) of section 17 alone. It is seen under sub Section (2) of Section 17 of the Act, the appropriate Government is empowered to exempt any person or class of persons employed in any establishment to which the Scheme applies from the operation of all or any of the provisions of the Scheme, in the event of such person or class of persons is entitled to benefits in the nature of provident fund, gratuity or old age pension and such benefits separately or jointly, are on the whole not less favourable than the benefits provided under the EPF Act or the scheme. In the instant case, the exemption sought for by the first petitioner establishment has not yet been granted. The grant of such exemption by the appropriate Government would be subject to such conditions as may be specified in the exemption order, exempting such establishment from the operation of all or any of the provisions of the EPF scheme and in any event it would be subject to the terms and conditions as specified in Appendix-A. The revised conditions governing the grant of exemption u/s. 17 of the EPF Act are stipulated in Appendix-A, enumerated at 1 to 31. Thus, it is to be examined as to whether the conditions enumerated in Appendix-A would be mutatis mutandis applicable to an order of relaxation passed by the Commissioner in exercise of his power under

paragraph 79 of the EPF Scheme.

16. The Commissioner under paragraph 79 of the EPF Scheme may in relation to a establishment in respect of which an application for exemption u/s 17 of the Act has been received, relax pending disposal of such application, the provisions of the EPF Scheme in such manner as he may decide and direct. In other words, while considering an application for relaxation under paragraph 79 of the EPF Scheme the Commissioner can relax all or any of the provisions of the Act and Scheme during the pendency or adjudication of such application for exemption filed by an establishment u/s 17 of the Act. He is also empowered to impose any of the conditions as he deems fit and he is also empowered to stipulate as to how the provisions of the scheme is relaxed in so far as such establishment is concerned and in such manner as he may direct. A bare reading of paragraph 79 of the scheme does not reflect that conditions specified or stipulated in Appendix-A would automatically or mutatis mutandis be applicable while considering the prayer for relaxation order being passed by the Commissioner. That does not also mean that Commissioner cannot impose those conditions as is found in Appendix-A while passing a relaxation order. The scope of exercise of power by the Commissioner under paragraph 79 is wide enough so as to encompass within its sweep to impose and include all such conditions or restrictions as he may consider necessary. Thus, law makers have consciously not restricted the power of the Commissioner under paragraph 79 by stipulating such of those conditions as is found in Appendix A alone to be imposed while granting an order of relaxation. In other words powers of Commissioner are wide enough to impose such conditions as he may consider necessary in such manner as he may direct.

17. It is to be noticed in the instant case that while granting relaxation order dated 13-14/10/2009 Annexure-G, Commissioner has imposed several conditions namely 1 to 40 and condition No. 39 and 40 would be of relevance for determining rival contentions raised in this regard. They read as under:

39. The relaxation is liable to be cancelled for violation of any of the above conditions.

40. The provisions of section 7A,7B, 8B, 14 14(B) of the Employees' Provident Funds & Miscellaneous Provisions Act, 1952 and the provisions made thereunder would apply mutatis-mutandis during the period of relaxation.

18. It has been made specifically clear in the said order that it is liable to be cancelled for violation of any of the conditions stipulated or imposed therein. In other words it means that violation of conditions 1 to 38 imposed under the said order of relaxation would result in cancellation of such order. However, a reading of the above order in its entirety does not disclose that neither Section 17, or paragraph 27AA or condition stipulated in Appendix-A have been made applicable to the said order mutatis mutandis. The power to impose conditions while granting relaxation order is vast and unfettered which is vested with the Commissioner. If he feels and desires that conditions stipulated in Appendix-A is

required to be made applicable even while granting a relaxation order, he would be entitled to impose even those conditions and incorporate the same in his order of relaxation. However, without such stipulation it would be impermissible for him to cancel the relaxation order by stating one of the conditions found in Appendix-A has been violated. It is no doubt true that power to do includes power to undo. However, the withdrawal of relaxation order can be on account of violation of any of the conditions specified in the relaxation order at 1 to 38 as stipulated in the relaxation order itself and not for violation of any other condition or term/s which is not to be found in the relaxation order. Thus, the contention of the learned counsel for petitioner that Commissioner does not have power to withdraw the relaxation order once issued cannot be accepted and it is hereby rejected. In the instant case, the Commissioner having granted the relaxation order has sought for withdrawal of the same on a ground other than what is imposed in the relaxation order, and as such issuance of show cause notice and consequential cancellation of relaxation order is bad in law to this extent.

19. Though, Sri. Harikrishna Holla has made an effort to persuade this court that under paragraph 27AA of the scheme read with Appendix-A. Commissioner can exercise such power for cancellation or withdrawal of relaxation order same cannot be accepted for the simple reason that paragraph 27AA refers to "exemptions already granted or to be granted hereinafter u/s. 17 of the Act or paragraph 27A of the scheme". It does not speak anything about relaxation order that would be passed by the Commissioner in exercise of his power under paragraph 79 of the Scheme. The exercise of power under paragraph 27AA is relatable to the power being exercised by the "appropriate Government" while granting such exemption and paragraph 79 refers to exercise of the power by the Commissioner while granting relaxation during the pendency of the application for exemption and as such these two powers exercised by two authorities namely the "appropriate Government" as well as "Commissioner" are separate, distinct and independent. It is seen from the impugned order as referred to supra that Commissioner has issued the show cause notice to the petitioner establishment and after considering the reply has passed the withdrawal order on the ground of violation of condition No. 25 found in Appendix -A which admittedly did not find a place in the conditions imposed at No. 1 to 38 while granting the relaxation order. As such the order impugned in the writ petition cannot be sustained and same is liable to be quashed and accordingly it is hereby quashed. RE: POINT NO. 3:-

As observed hereinabove the Commissioner is empowered to impose any condition while granting the order of relaxation and he is at liberty to impose such conditions including the conditions found in Appendix-A either by revising the order of relaxation or imposing such of those conditions as he considers necessary. It is also needless to observe that the Commissioner would be at liberty to issue show cause notice to the petitioner establishment for violation of any of the conditions found in the relaxation order and proceed to pass orders on

merits and in accordance with law. In view of the discussion made herein above, following order is passed:

ORDER

1. Writ petition is hereby allowed in part.
2. Condition No. 25 of Appendix-A to Paragraph 27AA of EPF Scheme, 1952 is held intra vires of section 17(2) of Employees Provident Fund and Miscellaneous Provisions Act, 1952.
3. The order of respondent No. 2 in No. KN/PF/ SRO /WF/KRP/ EXM/35701/2011-12/405 dated 1.06.2011 at Annexure-L is hereby quashed with liberty to the second respondent to proceed in accordance with law and as observed hereinabove.
4. A mandamus is issued to respondent No. 4 to consider the application of the petitioner dated 23.09.2009, Annexure-F in accordance with law and on merits within a period of six months from the date of receipt of certified copy of this order.