
(2025) 06 GAU CK 0177
In the Gauhati High Court
Case No : WP(C) Of 3490 Of 2016

Mukdashree High School And Anr

APPELLANT

Vs

Union Of India And 4 Ors

RESPONDENT

Date of Decision : 27-06-2025

Acts Referred:

Constitution Of India, 1950 — Article 226

Employees Provident Fund and Miscellaneous Provisions Act, 1952 — Section 2(A), 7(A)

Citation : (2025) 06 GAU CK 0177

Hon'ble Judges : Arun Dev Choudhury, J

Bench : Single Bench

Advocate : B Das, S Chakrabarty, A Dasgupta, K Chakravarty, M Dutta, A Chakraborty, P K Roy, H Terangpi

Final Decision : Dismissed

Judgement

Arun Dev Choudhury, J

1. Heard Mr. S. Chakrabarty, learned counsel for the petitioners and Mr. P.K. Roy, learned Senior counsel, assisted by Ms. S. Chakraborty, learned counsel for the respondents.

2. The Challenge:-

2.1 The present writ petition is filed by the petitioners assailing an order dated 25.04.2016 passed by the Regional Provident Fund Commissioner –II (hereinafter referred to as the Authority), whereby, invoking the provision of Section 2A of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the Act, 1952), the Act 1952 has been made applicable to the petitioner school with effect from 20.01.1997, by clubbing the petitioner school with another school, namely, Tiny Tots Home, as a single establishment. The petitioner No. 1, is Mukdashree High School, Silchar, and the petitioner No. 2 is the Headmaster of the said school.

3. The Maintainability of the writ petition:-

3.1 The learned Senior counsel for the respondents has raised a question on maintainability of the present writ petition, on the ground that any order passed under Section 2A of the Act, 1952, is an appealable under Section 7-A before the Provident Fund Tribunal, however, instead of preferring such appeal, the present proceeding is preferred, therefore, this writ petition is not maintainable, having efficacious alternative remedy.

3.2 It is the further contention of the respondents that the impugned order was passed by giving due opportunity of hearing to the petitioner and no case of procedural illegality, irregularity, irrationality, impropriety or unreasonableness has been made out to enable this Court to exercise of its power of judicial review under Article 226 of the Constitution of India.

3.3 On the other hand, learned counsel for the petitioner contends that by clubbing two schools, when both the schools, having separate registrations and are distinct entities, the authority has exceeded its jurisdiction by treating two separate schools as part of one single establishment and therefore, such order being passed without jurisdiction, this Court can rightly exercise its power of judicial review.

4. Determination on maintainability:

Coming to the arguments on the availability of alternative efficacious remedy, it is seen that initially, this writ petition was entertained on 10.06.2016 and the matter was admitted for hearing on 07.05.2019. It is also not in dispute that at the relevant point of time, the Tribunal was not available in the State of Assam, though during the pendency of this proceeding, the Tribunal at Guwahati was constituted. However, even on the date of hearing of this case, such Tribunal is non functional, due to non-availability of the Presiding Officer, and therefore, in the given facts of the present case, this Court is not inclined to relegate the petitioner to the Tribunal, which as on date, admittedly is not functioning, inasmuch as, the rule of alternative remedy is not a compulsion, but self-imposed rule.

5. Arguments on merit by the learned counsel for the petitioners:-

5.1 Though, the proceeding under Section 2A of the Act, 1952 was initiated for clubbing and determining the liabilities of the petitioner w.e.f. 01.01.2003, but by the impugned order dated 25.04.2016, the Act has been made applicable by clubbing both the schools w.e.f. 20.01.1997, which is beyond the period specified in the notice.

5.2 Though, the Authority in the impugned order recorded that the petitioner school never employed 20 or more employees, at any point of time and that no instance of common fund, transfer of fund from one school to the other school, has been noticed, the authority has perversely passed the impugned order, for having Unity of Ownership, based on a write up in a magazine, namely, 'SMRITISUDHA', which was an article written by different people on the death of

Late Kshitish Chandra Das, founder of Tiny Tots Home and therefore, the determination based on such an article, when there is no other material to arrive at such a decision, the same is perverted.

5.3 According to Mr. Chakarbarty, common ownership by itself would not make two establishments as one unit under Section 2A of the Act, 1952, unless, there is common supervision, financial or managerial control. In support of such contentions, Mr. Chakrabarty, places reliance on the decision of the Hon'ble Apex Court in Regional

Provident Fund Commissioner Vs. Dharamsi Morarji Chemical Co.Ltd reported in (1998) 2 SCC 446

5.4 The reliance placed by the Authority on the report of the Inspector of Schools, Silchar dated 05.03.1998, wherein Tiny Tots Home, has been shown as a feeder school of the petitioner school, is also perverse, inasmuch as, the authority has ignored the clarification dated 31.08.2009 by the Inspector of Schools indicating that two schools are different institutions and that Tiny Tots Home, is not a part of Mukdashree High School and also ignored the report that Tiny Tots Home is a feeder school of another School, namely, Holy Child School, Silchar.

5.5 The findings with respect to Functional Integrity and Geographical Proximity are malso based on isolated incidents, which are not regular features and as such, said findings are not legally sustainable.

5.6 The Authority has also ignored the materials placed by the petitioner school before it to indicate the numbers of students getting admitted in the petitioner school on transfer from Tiny Tots Home and other schools and such materials clearly indicate that it is not only Tiny Tots Home, however, many other schools from where students got admission in the petitioner school on transfer.

5.7 There is nothing on record to show or indicate that the petitioner school and Tiny Tots Home had any common employee, or that both schools are managed by the same staff, or that any employee had been working in both schools at the same point in time. There is also no instance or record to show that any employee of the petitioner school was transferred to Tiny Tots Home and joined there, and vice versa. However, the authority treated the subsequent appointments of some teachers of Tiny Tots Home in the petitioner school to arrive at such a conclusion.

5.8 The finding of the authority that the handwritings in the salary registers of the petitioner school and Tiny Tots Home are of the one person is based on no evidence, inasmuch as no opinion of a handwriting expert was taken.

5.9 While concluding his arguments, Mr. Chakrabarty learned counsel for the petitioners submits that Section 2 A of the Act, has no application in the present case, when two establishments are distinct and separate and these two separate establishments cannot be treated as departments or branches of the other

establishment, an admittedly, two different partnership agreements are there for the two schools and the partners are different having different shares in partnership. There is no common partner, and schools have separate buildings for classes. Therefore, Section 2A cannot be made applicable.

6. Arguments on merit by the learned counsel for the respondents:

6.1 The real purpose of the incorporation of Section 2A is to find out the true relationship between the two establishments. In the case in hand, two institutions are not managed by the same people, and though, through different partnerships, however, are functioning near each other and admittedly, Tiny Tots Home, is the feeder school of the petitioner school and therefore, the authority has not committed any error in clubbing the two establishments. In support, he places reliance on the decision of the Hon'ble Apex Court, in Mathosri Manikbai Kothari College of Visual Arts Vs. Assistant Provident Fund Commissioner reported in 2023 7 SCC 126 .

6.2 According to the learned Senior counsel, the authority has rightly determined the factum of unity of ownership, supervision, control and management between the two schools, inasmuch as, one of the partners, Sri Soumya Kanti Das of Tiny Tots Home, is the Headmaster-cum-Secretary of the petitioner school. At the same time, one Hilol Kanti Das, who is the partner of the petitioner school, is the Vice-President of Tiny Tots Home, and therefore, the finding of the authority in this regard cannot be said to be perverse.

6.3 For the unity of purpose, geographical proximity and functional integrity, the authority found that Tiny Tots Home was established on 11.07.1997 and was initially a proprietary concern and later on 27.03.1999, it was converted into a partnership. At the same time, Tiny Tots Home was running classes from Nursery Class to Class-VII and the petitioner School was running Classes from VIII- Class-IX and it was brought to the notice of the Authority that Tiny Tots Home is a feeder school of the petitioner school and therefore, the petitioner school cannot conveniently and reasonably survive in the event of closure of Tiny Tots Home and as such, the aforesaid finding of the fact, cannot be interfered by this Court.

6.4 As regards interchangeability/transferability of employees and unity of employment, it was found that one Sri Prasant Kr. Paul, Principal of Tiny Tots Home, was earlier working in the petitioner school as teacher, one Sarmistha Dutta, a teacher, who was working earlier in the petitioner school till December, 2001, started working in Tiny Tots Home later and one Ms. Sudeepa Sahu, a teacher worked earlier in the petitioner school till March, 2002 and subsequently, worked in Tiny Tots Home.

6.5 The learned Senior counsel further contends that the handwriting and pattern of captions used in salary acquaintance registers in respect of Tiny Tots Home and the petitioner school are unmistakably the same, and therefore, the aforesaid instances are found to be sufficient to testify 'unity of employment' or 'transferability' between the two schools. Accordingly, it is contended that the

writ petition is liable to be dismissed by upholding the impugned order.

7. Determination:-

7.1 I have given anxious consideration to the submissions made by the learned Counsel for both the parties. I have also perused the materials available on record, including the impugned order.

7.2 Now coming to the arguments on the merit of the case, this Court is of the unhesitant opinion that Section 2A empowers the Provident Fund Authorities to treat two or more establishments as one for applicability of the Act, inasmuch as, object of such power, is to get clarified that responsibility/liability towards the employees is not defeated by creating multiple entities under larger/integrated organization.

7.3 This Court cannot remain unmindful that it is important to identify and club different establishments whenever it is necessary and permissible, to achieve the social security benefit sought to be achieved through the Act 1952 by finding out and preventing the creation of artificial divisions to avoid obligation under the Act 1952. At the cost of repetition, it is recorded that Section 2A empowers the Provident Fund authority to treat two or more establishments as one for the applicability of the Act 1952, if certain essentials are fulfilled. Such essentials can be summarised as follows:-

I. Unity of Ownership; as to whether two or more establishments are owned by the same legal entity or person. While arriving at such a determination, what is to be considered is whether the proprietors/ partners/directors are the same across both establishments, whether the business is registered under the same name or group identity or whether the profits and losses are recorded together. Though the aforesaid shall not be exhaustive considerations, and there may be other considerations to find out the unity of ownership in each case, the caution is that common ownership, is though relevant, but not conclusive on its own and clubbing cannot be solely based on shared ownership, without other supporting factors like functional integrity.

II. 'Functional integrity' is another important test, inasmuch as it is to be determined by the Authority, whether the functioning of one unit is dependent on or interlinked with the other or whether each unit can function independently. The functional integrity is most decisive factor to be taken note of by the Court or Tribunal when such clubbing is considered or is under challenge. It is by now well settled that when a strong functional link exists, even the ownership difference can be ignored in a given case.

III. Unity of management, supervision, and control, which refers to common administrative and managerial control over both establishments, which may include the same decision-making authority, shared/centralised accounts, finances, and one unit taking strategic or operational decisions for both. Inter-unit transfer of staff etc. is also relevant.

IV. The geographical proximity test is another important test, which considers whether establishments are located on the same premises or in closed proximity. This geographical proximity test is also relatable to functional integrity test, inasmuch as, factors like interchange of employees, common management and shared resource, is relatable to proximity of the two units and such proximity makes functional integration easier to establish, however, such criteria cannot be the sole criteria and in given facts of a case, it may strengthen the case of the functional integrity and unity of management and supervision.

7.4 Taking note of the aforesaid tests, let this Court now deal with the findings of the Authority on each of the aforesaid essential criteria in the following paragraphs:

I. The findings of the Authority as regards the Unity of ownership, supervision, control and management between the two schools are based on the fact that one Shri Soumya Kanti Das, who is a working partner of Tiny Tots Home, is the Headmaster-cum-Secretary of the petitioner school. Shri Hilol Kanti Das, who is a working partner of the petitioner school, is found to be the Vice-Principal of Tiny Tots Home. The Salary Registers of Tiny Tots Home also reveal that Shri Hilol Kanti Das certified the disbursement of salaries to the staff in the capacity of Vice-Principal of the School. Further, the proceeding books of both the schools, produced before the authority during the enquiry, clearly show that both Shri Soumya Kanti Das, Headmaster-cum-secretary of the petitioner school and Shri Prasant Kr. Pal, the Principal of Tiny Tots Home, played a very crucial role in convening general/public meetings of the two schools to form the respective Managing Committees of the School. The General Meeting convened on 16/07/2007 by Shri Soumya Kanti Das, Headmaster-cum-Secretary of the petitioner school, to constitute the Managing Committee of the petitioner school was presided over by Shri Prasant Kr. Paul, Principal of Tiny Tots Home and attended by Smti. Namita Das, working partner of Tiny Tots Home and also the Assistant Headmistress of the petitioner school, along with several other teachers of Tiny Tots Home, including Shri Hilol Kanti Das, who is a working partner of the petitioner school and the Vice Principal of Tiny Tots Home. The Managing Committee of the petitioner school consists of, among others, Shri Soumya Kanti Das, as Headmaster cum Secretary, Smti Namita Das, working partner of Tiny Tots Home (Asst. Headmistress of the petitioner school) as member, Smti. Mousomi Paul, a teacher of Tiny Tots Home (Shown as House-wife) as member. Similarly, the General meeting was convened on 08/11/2008 by Shri Prasant Kr. Paul, to constitute Managing Committee of Tiny Tots Home was presided over by Shri Soumya Kanti Das, Headmaster-cum-Secretary of the petitioner school, who is also a working partner of Tiny Tots Home. The meeting was attended by many teachers of the petitioner school, including Smti. Namita Das, who is a working partner of Tiny Tots Home and the Assistant Headmistress of the petitioner school. The meeting was also attended by Smti. Subrata Das, the partner of the petitioner school and teacher of Tiny Tots Home. The Managing Committee of Tiny Tots Home consisted of, among others, Shri Soumya Kanti Das, Headmaster

cum Secretary of the petitioner school and also the partner of Tiny Tots Home as member, Shri Subrata Das, partner of the petitioner school as well as teacher of Tiny Tots Home, as member and Shri Sandeep Dasgupta, a teacher of Mukdashree High School. The constituent members of Managing Committee of both the schools have remained unchanged from the respective dates of their constitutions i.e. 16/07/2007 and 08/11/2008, till 22/09/2014 and 24/09/2014, respectively, which are the last recorded Managing Committee meeting dates found in the proceedings books of the petitioner school and Tiny Tots Home, respectively. In respect of Tiny Tots Home, the only change is related to the change of the President with the demise of Late Kalyan Kr. Sengupta.

II. According to the Authority, the aforesaid facts clearly establishes the closed knit network between the two schools and unveils the substantial degree of unity in the continuum of Supervisory, Managerial and Administrative control of the schools and the degree/extent of unity is such that the existence of two deeds and two separate Managing Committee of the schools has become nebulous in the eyes of keen observer with common sense.

III. However, in the considered opinion of this Court, even if the aforesaid facts are taken to be correct, it is clear that no common employee/teacher is working in both the schools at the same point in time, inasmuch as it is not in dispute that both the schools are established under two different partnership deeds and the partners are not the same across both the establishments. Both schools are registered independently. There is also no material on record to suggest that the finances of both schools, including the profits and losses, are calculated jointly.

IV. This Court cannot be unmindful of the settled proposition of law that Unity of Ownership, supervision, control and management, is not conclusive on its own in the absence of any supporting materials like functional integrity. The functional integrity was also dealt with in the aforesaid paragraphs. However, in the considered opinion of this Court, the material on which the conclusion is arrived at and as recorded hereinabove, cannot be treated to be very cogent material, rather material relied on by the Authority are stray incidences and cannot be said to be evidences/materials to have a conclusion that whether the functioning of one unit is dependent or interlinked with the other or that each unit cannot function independently.

V. So far, relating to 'Unity of Purpose, Geographical proximity and functional integrity', the authority found that Tiny Tots Home was established on 11/07/1977, initially as a proprietary concern and later on 27/03/1994 as a partnership concern. Tiny Tots Home was running classes from Nursery to class VII and the petitioner School from class VIII to class IX. As per the Inspection report, it was found that Tiny Tots Home is the feeder School of the petitioner School. It was also held by the Authority that from the proceeding books of the two schools that Class VIII was opened in Tiny Tots Home in the year 2010, and simultaneously, Class VIII was discontinued in the petitioner's School in the same year. A high degree of geographical proximity between the two schools was found

to the extent that Tiny Tots Home can run its classes in the premises of the petitioner School. It was also found that the average enrolment of students from other schools into the petitioner School in class VIII or IX over a period of almost 18 years, starting from 1995 to 2012, has been a single-digit number in 12 years. Enrolment in 2012 in class IX was 52 students from Tiny Tots Home, whereas only 7 students from other schools and therefore, the petitioner School cannot conveniently and reasonably survive in the event of closure of Tiny Tots Home.

VI. The findings of the Authority that the function of the petitioner school is dependent on the Tiny Tots Home being a feeder school cannot be said to be decisive. In absence of any material that of the students of only Tiny Tots Home are admitted in the Higher Classes of the petitioner school, more particularly, when materials are suggesting that Tiny Tots Home is not only the feeder school of the petitioner school and that Tiny Tots Home is also feeder school for other school as well. Therefore, it cannot be said that the functioning of the petitioner school is dependent on or interlinked with the Tiny Tots Home and that the petitioner school cannot independently function for want of students from Tiny Tot being admitted in the Higher Classes. Further, it cannot be said that the material on which the Authority placed its reliance, even suggests that there is common administrative and managerial control over both the establishments, including the same decision-making authority, shared centralised accounts and finance or that the petitioner school has been taking strategy or operational decision for both and vice-versa. Therefore, in the absence of such material, the conclusion arrived at by the Authority as regards the unity of ownership, supervision, control and management, in the considered opinion of this Court, is without evidence and therefore, is perverse. In the considered opinion of this Court, it is true that both schools are located in close proximity, however, in the absence of functional integrity and unity of operation, only Geographical proximity shall not be sufficient to club both the institutions together to bring them under the ambit of the Act, 1952.

VII. As regards interchangeability/transferability of employees and unity of employment, though, this test was not found to be prominently relevant by the Authority because of the prescribed norms of the Govt. on pupil/teacher ratio etc. However, from the records placed before the authority, it was held that Shri Prasant Kr. Paul, the Principal of Tiny Tots Home was earlier working in the petitioner school as teacher, Ms. Sarmistha Dutta, a teacher, who was working earlier in the petitioner school till December 2001, started working in Tiny Tots Home. Ms. Sudeepa Sahu, a teacher who was working earlier in the petitioner school till March 2002, started working in Tiny Tots Home. Md. Fazar Ali Barbhuiya, a teacher who was working earlier in Tiny Tots Home started working in the petitioner school. Mrs. Minu Choudhury a teacher, who was initially working at the petitioner school started working in Tiny Tots Home. Shri Soumya Kanti Das the Headmaster cum Secretary of the petitioner school was Principal of Tiny Tots Home in 1997. The vital document viz. salary Acquaintance Registers in

respect of Tiny Tots Home and the petitioner school respectively, vividly showed that the records were prepared by the same persons as the Handwriting and pattern of Captions used therein are unmistakably same. The said Handwritings are strikingly found to be similar of that of Soumya Kanti Das the present Headmaster cum Secretary of the petitioner school. These instances are found to be sufficient to testify 'unity of employment or 'transferability' between the two schools.

VIII. The material based on which the test as regards interchangeability and transferability of the employees and unity of employees was decided, in the considered opinion of this Court is also perverse, inasmuch as even if, the findings of the fact are accepted to be correct, there is no change of interchangeability or transferability amongst both the schools rather the aforesaid facts disclose that at no point of time, there were transfer but some teachers earlier appointed in one school were subsequently appointed in the other schools. Therefore, such independent appointment of teachers by the management of each of the schools cannot by any imagination, be treated as interchangeability or transferability of employees.

8. Conclusion:

For the discussions made and reasons recorded hereinabove, this Court is of the unhesitant opinion that the determination made by the Authority in the shape of the impugned order dated 25.04.2016, is not sustainable in law, being perverted and accordingly, the same stands set aside and quashed. Parties to bear their own costs.