

**(2003) 04 BOM CK 0117**

**In the Bombay High Court**

**Case No :** Appeal No"s. 349, 350, 378, 421 and 440 of 1995 in Writ Petition No"s. 1051, 1946 and 1972 of 1993, 1007 and 1507 of 1994

Pfizer Employees" Union, Mr. Vasant Janardhan Naik and Mr. Sadanand V. Marathe

**APPELLANT**

**Vs**

Regional Provident Fund Commissioner, Trustees of Pfizer Limited, Employee"s Provident Fund and Pfizer Limited <BR> Contract Advertising (India) Ltd., Mr. Manak Cawas Pardiwala, Mr. Chandrashekhar M. Alate, Miss Annie Anita Tellia, Miss Bernandine Braganza, Mr. Shaikh Mohiddin, Shibani Bathoja, Dhanashri Gondil, Pooja Gosain and Govin D"bras Vs Regional Provident Fund Commissioner <BR> Dara T. Gandhi and Govind Shankar Waghela Vs Regional Provident Fund Commissioner, Sepulchre Brothers (India) Pvt. Ltd. and Sepulchre Brothers (India) Ltd. Staff Provident Fund <BR> Mr. A.R. Khot and Miss C.D. Mello Vs Regional Provident Fund Commissioner, Colour Cartons Ltd. and Trustees of the Provident Fund of Colour Cartons Ltd.

**RESPONDENT**

---

**Date of Decision :** 17-04-2003

**Acts Referred:**

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 17, 17(1), 17(2), 17(3), 17(4)

**Citation :** (2003) 3 ALLMR 56 : (2003) 5 BomCR 536 : (2003) 3 LLJ 259 : (2003) 4 MhLj 667

**Hon'ble Judges :** D.K. Deshmukh, J;A.P. Shah, J

**Bench :** Division Bench

**Advocate :** J.P. Cama, i./b., Aditya Chitale, M.N. Bhatkal, i./b., P.L. Naik, for the Appellant; H.V. Mehta and R.C. Master, for the Respondent

---

**Judgement**

D.K. Deshmukh, J.—In all these Appeals the same order passed by the learned single Judge of this Court is challenged, therefore, all these Appeals can be conveniently disposed of by a common order.

2. In Appeal No. 378 of 1995, order passed in Writ Petition No. 1946 of 1993 has been challenged. That Petition was filed by the Trade union of the employees

working in Pfizer India Ltd., the Respondent No. 3 in the Writ Petition. In that Writ Petition order dated 4th March, 1993 passed by the Regional Provident Fund Commissioner (herein after referred to R.P.F.C.) was challenged.

In Appeal No. 349 of 1995, the order passed by the learned single Judge in Writ Petition No. 1051 of 1993 has been challenged. That Petition was filed by the Contract Advertising (I) Ltd., the employer as also some of the employees of Petitioner No. 1. By that Petition, in substance, directions contained in letter dated 27-3-1993 were challenged.

In Appeal No. 350 of 1995 the order passed by the learned single Judge in Writ Petition No. 1007 of 1994 has been challenged. That Writ Petition was filed by Contract Advertising (India) Ltd., the employer and some of the employees and in that Petition the directions contained in letters dated 26-10-1993 and 12-1-1994 issued by the R.P.F.C. were challenged.

In Appeal No. 421 of 1995, the order passed by the learned single Judge in Writ Petition No. 1507 of 1994 has been challenged. That Petition was filed by the employees working with Sepulchre Brothers (India) Ltd., which was Respondent No. 2 in the Petition. In that Petition the letter dated 27-4-1994 issued by the R.P.F.C. was challenged.

In Appeal No. 440 of 1995, order passed in Writ Petition No. 1972 of 1993 by the learned single Judge has been challenged. That Petition was filed by the employees of M/s. Colour Cartons Ltd., the Respondent No. 2 and in that Petition letter dated 17-11-1992, letter dated 3-6-1993 and show cause notice dated 23-8-1993 was challenged.

3. Subject matter of these Petitions was exemption claimed by individual employees of the establishment from the scheme framed under the Employees Provident Funds and Miscellaneous Provisions Act, 1952. The admitted facts which are relevant for the present purpose are that (i) the establishments to which these Appeals relate are covered by the provisions of the Act; (ii) all these establishments have not been exempted from the operation of the scheme by appropriate government u/s 17(1) of the Act; (iii) all these establishments have their own private Provident Funds Schemes; (iv) till 1988 the employees working in these establishments who became eligible for application of the statutory scheme under the Act made applications individually under paragraph 27 of the Statutory Provident Funds and those employees were granted exemption by the R.P.F.C.; (v) after 1988 when such applications were made by the individual employees of these establishments the R.P.F.C. insisted on imposing 28 conditions which were notified by the Central Government by notification dated 16-4-1987 on the employer as conditions for grant of exemption to the employees who had applied under paragraph 27 of the scheme. The R.P.F.C. also insisted that even for continuance of the exemption which has been already granted to the employees, it is necessary for the employer to accept these 28 conditions. Refusal of the R.P.F.C. to grant exemption to the individual employees

of the establishments under paragraph 27 of the scheme as also the stand taken by the R.P.F.C. that in case the employers do not undertake to abide by these 28 conditions, the exemption already granted to the employees will stand withdrawn was the reason why these Writ Petitions were filed before this Court.

4. Principal challenges in the Writ Petitions were that the Commissioner can not impose any condition on the employer while considering the application of the individual employee under paragraph 27 of the scheme and the Commissioner can not reject an application made by the individual employee for seeking exemption from the scheme, because the employer is not willing to accept the conditions which the Commissioner wants to impose on the employer. It was also the contention of the Petitioners that the Commissioner is seeking to impose conditions on the employer when the application is by an employee. It is not possible for an individual employee to force the employer to accept these conditions and therefore an employee who made an application under paragraph 27 was being asked by the Commissioner to do the impossible. With the result the very remedy provided by the statutory scheme to individual employee to seek exemption from the scheme was being denied. It was also the contention of the Petitioners that in terms of the provisions of Section 17(4) of the Act an exemption granted under Sub-section (2) of Section 17 can be withdrawn or cancelled only for failure to comply with the provisions of Sub-rule (3) of Section 17 and an exemption already granted can not be withdrawn or cancelled because the employer refuses to abide by or accept by any additional conditions. All these Petitions were decided by a common order passed by the learned single Judge of this Court dated 15th March, 1995. The learned single Judge dismissed all the Petitions. The learned single Judge held by referring to the definition of the term "exempted establishment" and "exempted employee" in Section 2(ff) and Section 2(fff) that whether an exemption is given to establishment or to employee it results by legal fiction into an exempted establishment as defined u/s 2(fff) and that both these exemptions are treated as one in effect and for the purpose of the Act. The learned single Judge also held that individual employee or class of employees can seek exemption as a matter of privilege and not as a matter of right and therefore the Commissioner is entitled to impose such conditions as he deems fit. The learned single Judge further held that the entire scheme of the Act deals with the liability and responsibility of employer in relation to any establishment to which the statutory scheme applies. It also deals with the responsibility of an employer in relation to exempted establishment and therefore it is not open to employer to say that because he has not applied for exemption he is not liable to pay the amounts u/s 8(b) of the Act, because Section 17 contemplates an exemption being granted whether by an appropriate government to the establishment or by the Commissioner to a class of employees, the result is the same namely the establishment is exempted. It is further held that once the appropriate government grants exemption u/s 17(1) of the Act or whether the Commissioner grants exemption u/s 17(2) of the Act for the purpose of the Act, the net results is that it is an exempted establishment. It

is further held that if the net result of grant of exemption is an exempted establishment then the Commissioner is certainly authorised to impose revised conditions. It is further held that the scheme of the Act, statutory rules and statutory scheme clearly indicate that Section 17 read as whole constitutes one complete Code dealing with exemption and it is not possible to bifurcate the parameter of Section 17(1) vis-a-vis Section 17(2) of the Act, because it will defeat the very object of the Act and it will defeat the entire scheme of the Act. The learned single Judge by referring to provisions of Sub-section (3) of Section 17 has held that the exemption granted u/s 17 is one and only exemption and there is no separate exemption contemplated as contended by the Petitioners. The learned Judge has held that the Legislature in enacting the Act has not segregated exemptions into two separate compartments, but the Legislature only referred to exemption u/s 17 as a whole and not Section 17(1) or Section 17(2). The learned Judge also observed that a Private Provident Fund is exposed to risk factors and the additional conditions are being imposed by the Commissioner for protection of the Private Provident Fund from the risk factors. The learned single Judge has further observed that the additional conditions which are being imposed by the Commissioner sub-served the object of the Act and they are meant to protect the Private Provident Fund and therefore they can equally apply even to those employees to whom exemption was granted on individual basis from 1952 to 1988. The learned single Judge has also referred to the 30th Annual Report for the year 1982-83 of the Employees Provident Fund Organisation and how held that the conditions which are being imposed by the Commissioner are in consonance with the report of the committee on exempted establishments.

5. On behalf of the Appellants it is contended that finding of the learned single Judge that exemption granted u/s 17(1) and Section 17(2) of the Act is the same is not correct. According to Appellants, exemption granted u/s 17(1) is by issuing a notification in the Official Gazette and it is in the nature of delegated legislation, whereas the exemption granted u/s 17(2) is by an administrative order under the provisions of the scheme. It is further submitted that individual employee can make an application under paragraph 27 of the scheme and the Commissioner while granting that application for exemption made by an individual employee can impose conditions only on the employee who is the applicant and no condition can be imposed by the Commissioner on the employer. It is contended that if the conditions are imposed on the employer and the employer refuses to accept those conditions, the result would be that the application made by the employee would be rejected. Thus, the net result is that an employee is being asked to comply with the condition which it is not for him to comply with an employee has no means to force his employer to accept the conditions, and therefore, a remedy provided by paragraph 27 of the Scheme to an individual employee to seek exemption is being permanently denied to an employee by the Commissioner by seeking to impose condition on the employer. It is further contended that from 1952 to 1988 individual employees were

granted exemption by the Commissioner. Now, the Commissioner is refusing to grant exemption to any more employees. The result is that in the same establishment some of the employees would be exempted and whereas some of the employees would not be exempted. This will result in anomaly.

6. On behalf of the Respondents, it is submitted that now the entire debate about the competence of the Commissioner to impose condition while considering the application for exemption from the scheme does not survive in view of incorporation of paragraph 27-AA in the scheme by notification dated 22-12-2000, which has come into effect from 6-1-2001. According to Respondents, in view of provisions of paragraph 27-AA all exemptions already granted or to be granted hereafter u/s 17 of the Act or under paragraph 27-A of the scheme are subject to terms and conditions as given in Appendix-A. According to Respondents, terms and conditions given in Appendix-A are the same which were sought to be imposed by the Commissioner pursuant to notification of the Central Government dated 16-4-1987. Thus, according to Respondents, all the challenges raised by the Petitioners to the competence of the Commissioner now do not survive in view of incorporation of paragraph 27-AA in the scheme. It is submitted on behalf of the Respondents that it is not necessary for this Court now to decide whether before paragraph 27-AA was inserted in the Scheme the Commissioner had power to impose conditions on the employer while considering the application of an employee under paragraph 27 of the Scheme. It is submitted that paragraph 27-AA makes the conditions in Appendix-A applicable also to the exemptions which are already granted. Therefore, even if it is assumed that till 6-1-2001 the Commissioner did not have the power and therefore the orders passed by the Commissioner which were challenged in the Petitions are set aside and the Commissioner is directed to grant the exemptions then also for continuance of the exemptions in terms of the provisions of paragraph 27-AA of the Scheme the conditions in Appendix-A will have to be complied with. It is further submitted that though the applications were returned and show cause notices were issued no further action was taken by the Commissioner, because during the pendency of the Petitions and the Appeals, interim orders were operating.

7. In reply to this submission it is submitted on behalf of the Appellants that paragraph 27-AA refers to Section 17 and paragraph 27-A. According to Appellants, applications that have been rejected by the Commissioner have been made by individual employees under paragraph 27 of the Scheme and paragraph 27 of the scheme is not mentioned in paragraph 27-AA of the scheme. It is contended that it also can not be said that an exemption granted to an individual employee under paragraph 27 is an exemption granted u/s 17. It is submitted that there is no provision in Section 17 for grant of exemption to individual employee. Sub-section (2) of Section 17 enables a provision being made in the scheme for grant of exemption to any person or class of person employed in the establishment to which the scheme applies. The submission of the Appellants, therefore, is that when exemption is granted to an employee or class of

employees it is not granted under Sub-section (2) of Section 17 of the Act, but it is granted under paragraph 27 or paragraph 27-A of the Scheme, because power to grant exemption to individual employee or class of employees is contained in paragraph 27 and paragraph 27-A of the Scheme and therefore in paragraph 27-AA paragraph 27-A has been specifically referred to, whereas paragraph 27 has not been referred to. Thus, according to Appellants in so far as application u/s 27 are concerned, situation continue to be the same and paragraph 27-AA does not make any difference.

8. Now, there is no dispute before us that the terms and conditions on which the Commissioner was insisting and in relation to which the Writ Petitions have been filed are the same conditions which are given in Appendix-A, which is referred to in paragraph 27-AA of the Scheme. It is clear from the rival submissions that if the Respondents are right in submitting that the provisions of paragraph 27-AA of the Scheme applying to application made and exemption granted under paragraph 27 of the Scheme, then it is not necessary for us to consider the question, which was raised in the Petitions and the Appeals, i.e. whether the Commissioner had the power to impose conditions on the employer while considering application under paragraph 27 of the Scheme. However, in case, we find that the provisions of paragraph 27-AA of the Scheme are not applicable to the application made under paragraph 27 of the Scheme, then it would be necessary for us to decide that question. Therefore, we propose to take up for consideration first the question whether the provisions of paragraph 27-AA of the Scheme apply to the application made and the exemption granted under paragraph 27 of the Scheme. For considering this question it is necessary for us to refer to the provisions of paragraph 27-AA of the Scheme first.

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

Perusal of paragraph 27-AA quoted above shows that it refers to exemption granted or to be granted u/s 17 of the Act as also exemption granted under paragraph 27-A of the scheme. It, therefore, becomes necessary to refer to the provisions of Section 17 of the Act. It is Sub-section (1) of Section 17 and Sub-section (2) of Section 17 which are relevant for the present purpose and they read as under:

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 of the provisions of any Scheme-

(a) any (establishment) to which this Act applies if, in the opinion of the appropriate Government, the rules of its provident fund with respect to the rates of contribution are not less favourable than those specified in Section 6 and the employees are also in enjoyment of other provident fund benefits which on the

whole are not less favourable to the employees than the benefits, provided under this act or any Scheme in relation to the employees in any other (establishment) of a similar character: or

(b) any (establishment) if the employees of such (establishment) are in enjoyment of benefits in the nature of provident fund, pension or gratuity and the appropriate government is of opinion that such benefits, separately or jointly, are on the whole not less favourable to such employees than the benefits provided under this Act or any Scheme in relation to employees in any other (establishment) of a similar character.

17(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.

(2-A) The (Central Provident Fund Commissioner) may, if requested so to do by the employer, by notification in the Official Gazette, and subject to such conditions as may be specified in the notification, exempt whether prospectively or retrospectively, any establishment from the operation of all or any of the provisions of the Insurance Scheme, If he is satisfied that the employee of such establishment are, without making any separate contribution or payment of premium, in enjoyment of benefits in the nature of life insurance, whether linked to their deposits in provident fund or not, and such benefits are more favourable to such employees than the benefits admissible under the Insurance Scheme.

(2-B) Without prejudice to the provisions of Sub-section (2A), the Insurance Scheme may provide for the exemption of any person or class of persons employed in any establishment and covered by that scheme from the operation of all or any of the provisions thereof, if the benefits in the nature of life insurance admissible to such person or class of persons are more favourable than the benefits provided under the Insurance Scheme.

Perusal of provisions of Section 17(1) of the Act shows that an exemption from operation of the provisions of the scheme can be granted by the Appropriate Government by notification in the Official Gazette to an establishment and that exemption is subject to such conditions as may be specified in the notification. Therefore, in sub-section 1 itself there is power vested in the Appropriate Government to grant exemption to an establishment subject to the conditions that are to be specified in the notification. Perusal of provisions of Sub-section (2) of Section 17 shows that it makes a provision for a provision to be made in the scheme framed under the Act for grant of exemption to any person or class

of persons employed in an establishment to which the statutory scheme applies. Perusal of proviso to Sub-section (2) of Section 17 shows that it lays down that no exemption shall be granted to a class of employees unless the Appropriate Government is of the opinion that the majority of persons constituting such class desire to continue to be entitled to such benefits. It is thus clear that Section 17 contains provisions for grant of exemption to an establishment as also to individual employee and class of employee. Then, the next provisions that is relevant is paragraph 27 of the Statutory Scheme. Paragraph 27 reads as under:

27. Exemption of an employee.- (1) A Commissioner 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 an employee to whom the Scheme applies on receipt of application in Form I from such an employee:

Provided that such an employee is entitled to benefit in the nature of Provident Fund, gratuity or old-age pension according to the rules of the factory or other establishment and such benefit separately or jointly are on the whole not less favourable than the benefits provided under the Act and the Scheme.

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

(3) An employee exempted under sub-paragraph (1) may by an application to the commissioner make a declaration that he shall become a member of the Fund.

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

Perusal of paragraph 27 of the Scheme shows that power under that paragraph has been conferred on the Commissioner to make an order exempting from the operation of the provisions of the Scheme an employee to whom the Scheme applies. That order can be made by the Commissioner after receiving an application from an employee. Then comes paragraph 27-A. It reads as under:-

27-A. 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 are entitled to benefit 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 are on the whole not less favourable than the benefits 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 sub-paragraph (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 member 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 October, 1953.

Perusal of paragraph 27-A shows that power is vested on the Appropriate Government to grant exemption from the provisions of the Scheme to a class of employees to whom the Scheme applies. It is to be seen that in the statutory Scheme, thus, there are two provisions namely paragraph 27 and paragraph 27A, which deal with grant of exemption to the employee. Perusal of paragraph 27-AA shows that it in terms refers to paragraph 27-A of the Scheme, but it does not refer to paragraph 27 of the Scheme, but never the less it refers to Section 17 of the Act. Therefore, it is submitted on behalf of the Appellants that paragraph 27-AA is not applicable to an application made under paragraph 27 of the Scheme. In our opinion, however, reference to Section 17 of the Act in paragraph 27-AA will take into its compass applications made and exemption granted under paragraph 27 also. The purpose of inserting paragraph 27-AA is to impose certain terms and conditions on the employer in relation to whose establishment exemption is being granted. Perusal of Sub-section 1 of Section 17 shows that provisions itself vested power in the appropriate Government to impose conditions and therefore, when the appropriate Government is granting exemption u/s 17(1) to an establishment it has power to impose condition by a notification in the Official Gazette. Thus the appropriate Government gets the power to impose condition from Section 17(1) of the Act when it exempts an establishment and therefore enables the appropriate Government to impose conditions on an employer while exempting an establishment, no power is to be vested by a provision made in the Scheme framed under the Act. In fact, the Central Government issued a notification dated 16-4-1987. Perusal of that notification shows that it has been issued by the Central Government in exercise of its power under Sub-section (1) of Section 17 of the Act imposing conditions for grant of exemption to an establishment. Perusal of those conditions shows that they are identical to the ones which are contained in Appendix-A, which is referred to in paragraph 27-AA of the Scheme. The learned Counsel appearing for the Appellants also stated that the conditions which are mentioned in the notification dated 16-4-1987 and the conditions which are mentioned in Appendix-A referred to in paragraph 27-AA are identical. Therefore, the conditions were already imposed by the appropriate Government in relation to

the establishments which are exempted under Sub-section (1) of Section 17. It is obvious that when paragraph 27-AA refers to Section 17, it does not refer to Sub-section (1) of Section 17. The only other provision regarding grant of exemption found in Section 17 is contained in Sub-section (2) of Section 17 of the Act and it relates to grant of exemption to individual employee and class of employees. It thus appears that Sub-section (2) of Section 17 does not itself authorise any authority to grant exemption to individual employee or class of employees, but it enables making of provisions in the Scheme framed under the Act for grant of exemption to individual employee or class of employees. In exercise of this provisions while framing the Scheme paragraph 27 has been framed, which empowers the Commissioner to grant exemption to individual employee. Thus, paragraph 27 has its source in Sub-section 2 of Section 17 and therefore when the Commissioner grants exemption under paragraph 27, exemption relates to the provisions of Section 17 of the Act and therefore we are satisfied that the provisions of paragraph 27-AA will also be applicable to the applications which are made under paragraph 27 for exemption by an individual employee, because though the order granting exemption is made under paragraph 27, the substantive provision enabling grant of such exemption is to be found in Section 17(2) of the Act.

9. It is to be seen here that these conditions which are mentioned in Appendix-A are to be imposed to safeguard the interest of the employees. It does not stand to reason that imposition of such condition would be necessary when a class of employees is to be exempted, whereas it will not apply where an individual employee is to be exempted. It can not be forgotten that though applications may be made by individual employees, if all the applications are taken together, in reality the applications are by a class of employees who are employed in a particular establishment. If it is assumed that paragraph 27-AA does not apply to exemption granted under paragraph 27, when it would mean that though as a result of grant of exemption to individual employee the entire class of employees employed in a particular establishment gets exempted. Conditions mentioned in Appendix-A are not applicable. But if in stead of individual employee making applications, an application is made for exemption by class of employees namely employees working in particular establishment, the conditions would be applicable. In our opinion, such a situation would be anomalous and would tend to defeat the purpose for which the paragraph 27-AA has been incorporated.

10. It can not be forgotten that these conditions are being imposed by the Central Government while granting exemption to the establishment under Sub-section (1) of Section 17, because the Central Government found that imposition of such condition is necessary for safeguarding the interest of the employees and greater control on the Private Provident Fund scheme is necessary to dilute the risk factors which are involved in the Private Provident Fund Schemes. The result of incorporation of paragraph 27-AA is that now whether an establishment is exempted or a class of employees is exempted or individual employee are exempted, the conditions which are applicable will be uniform. The learned single

Judge has referred to this aspect of the matter in detail. In our opinion, following observations made by the learned single Judge in paragraph 4 of the judgment are pertinent.

A Private Fund may also be exposed to risk factors. For example when the Companies are wound up or dissolved on several occasions this Court finds that notwithstanding the provisions of Section 17(3), Section 17(4) and Section 17(5) of the Act, the R.P.F.C. is not able to recover the amount. On several occasions the Companies come within the purview of B.I.F.R. In such cases the revised conditions play a very important role. For example if a Trustee of a Private Provident Fund is required to give undertaking to the R.P.F.C. if the R.P.F.C. is also to take collateral security then in such cases R.P.F.C. can enforce the conditions qua the Trustees of the Private Provident Fund. From 1952 to 1988 I find that none of the establishments herein have ever applied for exemption. None of the establishments have agreed or undertaken to the R.P.F.C. to implement the conditions and over the years only individual employees or class of employees have obtained exemptions or class of employees have obtained exemptions which can not have the Fund or protect the Fund from risk factors which arises on account of economic or financial adverse circumstances. The submission of returns as directed by the Government or making investments in Government Securities or taking penal action for not maintaining accounts or for violation of the Statutory conditions, although necessary, may not be foolproof and in the circumstances the R.P.F.C. can certainly insist on additional condition which would protect the Private Fund from the risk factors. It is in this light that all the revised conditions may be seen.

11. It is further to be seen here that all these conditions were imposed by the Central Government, firstly in case of exempted employees u/s 17(1) because a report was submitted by a committee which was constituted for making recommendations for the purpose of protecting the Private Provident Fund and for preservations of those funds. The learned single Judge has referred to the 30th Annual Report for the year 1982-83 of the employees Provident Fund Organisation.

12. It may be pointed out here that though paragraph 27-AA has come into force with effect from 6-1-2001, during pendency of these Appeals, the Appellants have not challenged the validity of the provisions of paragraph 27-AA and only submissions were made before us on construction of paragraph 27-AA. We find that in view of insertion of paragraph 27-AA now, any doubts about, the power of the Commissioner to impose conditions for grant of exemption under paragraph 27 and insistence on compliance with these conditions also for continuance of the exemption already granted have vanished and the Commissioner does have powers to impose conditions which are mentioned in Appendix-A to paragraph 27-AA. Thus, we find that the provisions of paragraph 27-AA of the Scheme only to the applications made the exemption granted under paragraph 27 of the Scheme. In view of this finding, for the reason indicated above, it is not

necessary for us to consider the question whether before insertion of paragraph 27-AA in the Scheme the Commissioner had the power to impose condition on the employer.

13. In the result, therefore, Appeals fail and are dismissed.

14. In paragraph 6 of the judgment of the learned single Judge, the learned single Judge has directed the Commissioner to decide the applications which are pending before him as also proceedings which are pending before him in the light of the judgment of the learned single Judge. The learned single Judge has referred that in some cases show cause notices have been issued and in some cases show cause notice have not been issued. During the pendency of the Petitions as well as these Appeals there were interim orders made by the Court, as a result of which we are informed that no further action in this regard has been taken by the Commissioner. In these circumstances, therefore, we direct that the R.P.F.C. shall reconsider all the matters pending before him in the light of the provisions of paragraph 27-AA and proceed further in accordance with law.

At the request of the learned Counsel for the Appellants, it is directed that the Commissioner shall not initiate further action for a period of twelve weeks from today.

Parties to act on ordinary copy of the order duly authenticated by the Personal Secretary of the Court as a true copy.