

**(2011) 12 P&H CK 0154**  
**In the Punjab And Haryana At Chandigarh**  
**Case No : C.W.P. No. 8476 of 1987**

|                                                 |            |
|-------------------------------------------------|------------|
| Punjab Urban Planning and Development Authority | APPELLANT  |
| Vs                                              |            |
| Union of India and Another                      | RESPONDENT |

---

**Date of Decision :** 15-12-2011

**Acts Referred:**

Constitution of India, 1950 — Article 12  
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 1(3),  
16, 16(2), 7(1), 7A  
Provident Funds Act, 1925 — Section 8  
Punjab Housing Development Board Act, 1972 — Section 16, 3, 32(IV), 4

**Citation :** (2012) 132 FLR 1102 : (2012) 3 LLJ 505 : (2012) LLR 313

**Hon'ble Judges :** K. Kannan, J

**Bench :** Single Bench

**Final Decision :** Dismissed

---

## Judgement

K. Kannan J.—The writ petition is at the instance of the Punjab Urban Planning and Development Authority that challenges the order passed by the Regional Provident Fund Commissioner directing the compulsory applicability of the Employees' Provident Fund Act through the impugned order of the Regional Provident Fund Commissioner. He undertook an enquiry regarding the determination of the money due from the employers and held as untenable the plea of the petitioner that the Provident Fund Act of 1952 would not be applicable to the Authority in view of the Presidential assent to the Punjab Housing Development Board Act, 1972 (for short Act of 1972) that contained provisions for creation of Provident Fund. Provident fund itself being a subject falling within the concurrent list, the petitioner would be governed by their provisions prescribed under the Act of 1972 and the Central Government 1952 will not be applicable. It was the contention on behalf of the Board that issuance of notification u/s 1(3) (b) of the 1952 Act was only an executive act in exercise of the delegated power and it must yield to the plenary legislation made by the State that it obtained through the Presidential assent on 06.01.1973. The

notification cannot, therefore, repeal the existing State law. According to the petitioner, by virtue of Section 16 of the State Act, the State Act would continue to operate and prevail despite the inclusion of building and construction industry by the Central Government in Appendix I of the Central Act of 1952.

2. Through the impugned order, the Provident Fund Commissioner had reasoned that by virtue of Section 16 of the State Act of 1972, a provision had been made for constitution of a Provident Fund for the employees of the Board without, however, making any provision for the family pension and employees' deposit linked insurance benefits for its employees as envisaged in the Employees' Provident Fund and Misc. Provisions Act, 1952. The Central Government 1952 provided for several claims and could be rightly called as the enactment occupying the field of Provident Fund and other social security measures like the payment of family pension and deposit linked insurance benefits. The State Act, which was subsequently passed with the Presidential assent could not have repealed or eclipsed any portion of the Central Act of 1952 directly or by necessary implications. Section 16 of the Act of 1972 itself only referred to the Provident Fund Act of 1925 and made no reference to the 1952 Act. The 1952 Act itself underwent several amendment first by Act 40 of 1973 making general amendments in the Act and by Act 99 of 1976 incorporating the provision for the Employees Deposit Linked Insurance Scheme w.e.f. 1st August 1976 and then w.e.f. 31.10.1980, the addition of building and construction industry within the purview of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. By a statutory notification made by the Central Government in its Official Gazette vide GSR No. 1069 dated 11.10.1980 applying the Act in the building and construction industry as well from 31.10.1980, the Act become fully operational in relation to other establishment, which was engaged in building and construction industry.

3. The Regional Provident Fund Commissioner, therefore, decided against the preliminary objections raised by the petitioner regarding the applicability of the Central Act and had ordered that the proceedings u/s 7A of the Act for the purpose of assessment of the dues for the period 11/80 to 7/85 would continue. This order had been passed on 29.9.1987 and was brought for admission before this Court on 16.11.1987. The Court had ordered notice of motion but specifically observed that there shall be no stay for the present, it was again brought up for hearing on 9.2.1988 and the case stood admitted but the Court had observed that no recovery shall be made till the decision in the writ petition. By order of the Court, the cause title of the petition alone was directed to be changed as Punjab Urban Planning and Development Authority. At a later hearing before this Court on 25.4.2005, the representation had been that the Tribunal have been constituted and the issue has to be decided by an appeal to the Tribunal u/s 7(1) of the 1952 Act. The constitution of the Tribunal has been made by virtue of an amendment brought through Act 33 of 1988 that has come into effect on 01.07.1997. Since the amendment has come about subsequent to the institution of the writ petition, there was no exclusion of jurisdiction of this court.

4. The issue is not really one of conflict between the State and Centre enactment. Section 16 of the Punjab Housing Development Board Act, 1972 specifically provides for establishment of a provident fund for the employees of the Board. Section 16 is reproduced as under:--

16. Provident Fund.--(1) The State Government shall establish a provident for the employees of the Board and such provident fund shall be deemed to be a Government Provident Fund for the purpose of the Provident Fund Act, 1925 (Central Act XIV of 1925) and notwithstanding anything contained in Section 8 thereof, such fund may be administered by such officers of the State Government or of the Board as the State Government may specify in that behalf.

(2) The Board shall in respect of each of its employees, who is a subscriber to the said fund, pay into the said fund, such portion of the contribution in such manner as the State Government may, from time to time, determine.

5. As has been observed already by the Provident Fund Commissioner, the reference is not to exclude the Employees Provident Fund Act, 1952. This Act had been passed in the year 1972 and the Legislature has deliberately not made reference to the Employees Provident Fund Act, 1952. The proper question would be really one of the power of the Provident Fund Commissioner to apply the provisions of the Act through a procedure prescribed u/s 7A. The exemption from the applicability of the Act is provided through Section 16 of the Employees Provident Fund Act. Section 16 deals with certain establishments to which the Act will not be applicable. Section 16 reads:--

16. Act not to apply to certain establishments.--(1) This act shall not apply--

(a) to any establishment registered under the Co-operative Societies Act, 1912 (2 of 1912) or under any other law for the time being in force in any State relating to co-operative societies, employing less than fifty persons and working without the aid of power; or

(b) to any other establishment belonging to or under the control of the Central Government or a State Government and whose employees are entitled to the benefit of contributory provident fund or old age pension in accordance with any scheme or rule framed by the Central Government or the State Government governing such benefits; or

(c) to any other establishment set up under any Central, Provincial or State Act and whose employees are entitled to the benefits of contributory provident fund or old age pension in accordance with any scheme or rule framed under that Act governing such benefits.

(2) If the Central Government is of opinion that having regard to the financial position of any class of (establishments) or other circumstances of the case, it is necessary or expedient so to do, it may, by notification in the Official Gazette, and subject to such conditions as may be specified in the notification, exempt (whether prospectively or retrospectively) that class of (establishments) from the

operation of this Act for such period as may be specified in the notification.

6. It exempts only establishments belonging to or under the control of the Central Government or the State Government. If the Punjab Housing Board were to be treated as an establishment belonging to or under the control of the State Government, then Section 16(b) would completely exclude the applicability of the Central Act but the Housing Board is a creature of statute and Section 3 of the Punjab Housing Development Board Act, 1972 makes the Board a body corporation with the common seal and Section 4 sets up an independent constitution. The degree of control of the Government in respect of independent Boards established by contract have been subject of consideration in several decisions. This point arose also in *Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc.*, and *Tata Memorial Hospital Workers Union Vs. Tata Memorial Centre and Another, .* In both these cases the issue was with reference to meaning of appropriate Government and the meaning of the expression under the control of the Government. In the *Steel Authority of India Limited*, the Hon"ble Supreme Court held as follows:--

From the above discussion, it follows that the fact of being instrumentality of a Central/State Govt. or being State within the meaning of Article 12 of the Constitution cannot be determinative of the question as to whether an industry carried on by a Company/Corporation or an instrumentality of the Govt. is by or under the authority of the Central Government for the purpose of or within the meaning of the definition of appropriate Government in the Central, Provincial or State Act Central, Provincial or State Act. Take the case of a State Government corporation/company/undertaking set up and owned by the State Government which is an instrumentality or agency of the State Government and is engaged in carrying on an industry, can it be assumed that the industry is carried on under the authority of the Central Government, and in relation to any industrial dispute concerning the industry can it be said that the appropriate Government is the Central Government We think the answer must be in the negative. In the above example if, as a fact, any industry is carried on by the State Government undertaking under the authority of the Central Government, then in relation to any industrial dispute concerning that industry, the appropriate Government will be the Central Government. This is so not because it is agency or instrumentality of the Central Government but because the industry is carried on by the State Govt. Company/Corporation/Undertaking under the authority of the Central Government. In our view, the same reasoning applies to a Central Government undertaking as well. Further, the definition of establishment in CLRA Act takes in its fold purely private undertakings which cannot be brought within the meaning of Article 12 of the Constitution. In such a case how is "appropriate Government" determined for the purpose of CLRA Act or Industrial Disputes Act? In our view, the test which is determinative is whether the industry carried on by the establishment in question is under the authority of the Central Govt.? Obviously, there cannot be one test for one part of definition of establishment and another test for another part. Thus, it is clear that the criterion is whether an undertaking

instrumentality of Government is carrying on an industry under the authority of the Central Government and not whether the undertaking is instrumentality or agency of the Government for purposes of Article 12 of the Constitution, be it of Central Government or State Government.

As far as an industry carried on by the Central Government is concerned, there need not be much controversy inasmuch as it would mean the industries such as the Railways or the Posts and Telegraphs, which are carried on departmentally by the Central Government itself. The difficulty arises while deciding the industry which is carried on, not by but under the authority of the Central Government. Now, as has been noted above, in the Constitution Bench judgment in *SAIL 1*, the approach of the different benches in the four earlier judgments has been specifically approved and the view expressed in *Air India* has been disagreed with. The phrase under the authority has been interpreted in *Heavy Engineering Mazdoor Union Vs. State of Bihar and Others*, to mean pursuant to the authority such as where an agent or servant acts under authority of his principal or master. That obviously cannot be said of a company incorporated under the Companies Act, as laid down in *Heavy Engg. Mazdoor Union* case. However, where a statute setting up a corporation so provides specifically, it can easily be identified as an agent of the State. The propositions in *SAIL* are to be seen on this background viz. that merely because the government companies/corporations and societies are discharging public functions and duties that does not by itself make them agents of the Central or the State Government. The industry or undertaking has to be carried under the authority of the Central Government or the State Government. That authority may be conferred either by a statute or by virtue of a relationship of principal and agent; or delegation of power. When it comes to conferring power by statute, there is not much difficulty. However, where it is not so, and whether the undertaking is functioning under authority is a question of fact. It is to be decided on the facts and circumstances of each case.

7. The Supreme Court in *Housing Board Haryana v. Haryana Housing Board Employees Union and others*, 1996 (1) LLN 1, while dealing with the scope of Section 32(IV) and the meaning of local authority, rejected the contention that Haryana Housing Board was a local authority and exempted it from the purview of Bonus Act. The Supreme Court held as under:--

It will be seen that the legislature itself has given the Board limited status of "local authority" only for the purpose of Land Acquisition Act as also the parent Act, namely, the Haryana Housing Board Act, 1971, under which the Board has been constituted and established. The Legislature has given this status only fictionally as the Board, in reality, is not a "local authority" and that too only for the limited purpose. The Legislature could well have given this status to the Board for purposes of other Acts also including the Payment of Bonus Act but this has not been done and consequently the Board, cannot, specially In view of what has been stated above, be treated as "local authority" under the Payment of Bonus Act.

8. It cannot, therefore, be stated that the petitioner is an establishment which belongs or under the control of the State Government. The writ petition is dismissed. The further proceedings for ascertainment of the amount due to be remitted by the petitioner shall be continued in terms of the impugned order. The petitioner is however entitled to apply for exemption independently to the Provident Commissioner u/s 16(2) of Employees Provident Fund Act, who shall examine the issue from the point of view of whether the provisions of the provident fund scheme of the petitioner Board is more favourable than the scheme provided under the Central Act and if so established, the Provident Fund Commissioner shall give the benefit of exemption in accordance with law.