(2021) 12 BOM CK 0043

In the Bombay High Court

Case No : Letters Patent Appeal No. 293 Of 2011 In Writ Petition No. 550 Of 1999(D)

Regional Provident Fund Commissioner And Others	APPELLANT
Vs	
Sanjay Memorial Teachers Education Society	RESPONDENT

Date of Decision : 10-12-2021

Acts Referred:

Maharashtra Employees Of Private Schools (Conditions Of Service) Rules, 1981 — Rule 20

Employees? Provident Funds And Miscellaneous Provisions Act, 1952 — Section 1(3)(b), 7A, 7I, 16, 16(1), 16(1)(a), 16(1)(b)

Citation : (2021) 12 BOM CK 0043

Hon'ble Judges : A.S.Chandurkar, J;G.A.Sanap, J

Bench : Division Bench

Advocate : H.N. Verma, A.C.Dharmadhikari

Final Decision : Dismissed

Judgement

A.S.Chandurkar, J

1. This letters patent appeal filed under Clause 15 of the Letters Patent raises a challenge to the judgment of the learned Single Judge dated 19.07.2010 in Writ Petition No.550/1999. By the said judgment the learned Single Judge was pleased to uphold the order passed by the Employees Provident Fund Appellate Tribunal-Tribunal dated 11.09.1998 resulting in dismissal of the writ petition preferred by the appellants herein.

2. The facts in brief are that on 19.02.1982 the Central Government issued Notification under Section 1(3)(b) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (for short, the Act of 1952). It specifies various classes of establishments wherein 20 or more persons employed so as to make the provisions of the Act of 1952 applicable to them. Classes of establishments included any school whether recognized or not or aided by the Central or State Government. Pursuant thereto an inspection was carried out by

the authorities under the Act of 1952 as regards the schools run by the respondent-Education Society. Thereafter notice under Section 7-A of the Act of 1952 was issued to the Society on 19.10.1995 seeking to apply the provisions of the Act of 1952 to the schools run by the Society. This show cause notice was replied by the Society on 15.12.1995. It was pointed out that in view of provisions of the Rules framed under the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (for short, 'the Act of 1977') the employees of the various schools were governed by the Provident Fund Scheme of the State Government. On 26.03.1996 the Regional Provident Fund Commissioner in exercise of powers conferred by Section 7-A of the Act of 1952 proceeded to hold that the Act of 1952 was applicable to the institutions/schools run by the Society from August 1986. Thereafter on 22.07.1996 the Regional Provident Fund Commissioner passed an order making the Act of 1952 applicable to the institutions/schools run by the Society and directing compliance of the same from 01.09.1986. The Society being aggrieved by the aforesaid adjudication preferred Writ Petition No.2690/1996 but since the Tribunal was constituted for entertaining appeals, the writ petition was permitted to be withdrawn with liberty to approach the Tribunal. The Society thereafter approached the Tribunal by filing an appeal under Section 7-I of the Act of 1952. The learned Presiding Officer of the Tribunal after referring to the provisions of Section 16(1)(b) of the Act of 1952 as well as Rule 20 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (for short, 'the Rules of 1981') held that the schools being duly recognized by the State Government were under its control and hence they stood excluded from the operation of the Act of 1952. The appeal was accordingly allowed. The Regional Provident Fund Commissioner being aggrieved by the aforesaid adjudication preferred Writ Petition No.550/1999 in this Court. The learned Single Judge after finding that there was regular deduction of provident fund for the employees of various schools run by the Education Society proceeded to hold in the context of Section 16(1)(b) of the Act of 1952 alongwith Rule 20 of the Rules of 1981 that the order passed by the Tribunal was legal and proper not requiring any interference. The learned Single Judge therefore dismissed the writ petition on 19.07.2010. Being aggrieved the original petitioners have preferred this letters patent appeal.

3. Shri H.N.Verma, learned counsel for the appellants referred to various documents on record and submitted that what was required to be considered was whether the Society was complying with the provisions of Rule 20 of the Rules 1981 assuming that the provisions of Section 16(1)(b) of the Act of 1952 were applicable. He submitted that relevant period that was the subject matter of dispute was from August 1986 to September 1995 while the material on record indicated the steps taken under Rule 20 of the Rules 1981 after September 1995. He submits that the representatives of the Society having admitted that the provisions of the Act of 1952 were applicable to it could not be now permitted to take a contrary stand. It was his submission that even for seeking benefits as

regards non-applicability of all provisions of the Act of 1952 there ought to be a specific exemption granted by the authorities under Section 16(1)(b) of the Act of 1952. The party seeking to take benefit of the aforesaid provision was required to point out existence of appropriate Scheme as contemplated by Rule 20 of the Rules of 1981 and only thereafter would the exemption operate. A fact-finding enquiry by the authorities was necessary and exemption on this count was not automatic. There was no material before the Authority in the proceedings under Section 7-A of the Act of 1952. New material was considered for the first time by the Tribunal and further material was then considered by the learned Single Judge as a result of which the impugned orders came to be passed. He therefore submitted that it was necessary to have a fact finding enquiry as to whether the institutions/schools run by the Society were entitled for exemption under Section 16(1)(b) of the Act of 1952. To substantiate his contentions the learned counsel placed reliance on the decisions in Regional Provident Fund Commissioner vs. Sanatan Dharam Girls Secondary School and Ors. AIR 2007 SC 276 and Saraswati Construction Company vs. Central Board of Trustees 2010 LLR 684 to submit that the order passed by the learned Single Judge and affirming the order passed by the Tribunal was liable to be set aside.

4. Shri A.C.Dharmadhikari, learned counsel for the respondent supported the impugned order passed by the learned Single Judge. He referred to the provisions of Rule 20 of the Rules of 1981 and submitted that since the schools run by the Society were duly recognized, they were under the control of the State Government and its authorities. By virtue of Rule 20 of the Rules 1981 the institutions/schools run by the Society were entitled for exemption from the applicability of the provisions of the Act of 1952. There was material on record before the Tribunal as well as before the learned Single Judge and hence the conclusion as recorded that the Society was entitled to rely upon the provisions of Section 16(1)(b) of the Act of 1952 resulting in grant of exemption from the applicability of the provisions of the Act of 1952 was correct. He invited attention to the judgment of the learned Single Judge in Balasaheb Dempurikar Vidhya Mandir, Umari vs. State of Maharashtra and Ors. 2017(3) Mh.L.J. 825 as well as the affidavit filed in the writ petition as directed by the learned Single Judge. Since Rule 20 of the Rules of 1981 was clear and the Society had been complying with the same, there was no reason to interfere with the order passed by the learned Single Judge so as to apply the provisions of the Act of 1952 to the institutions/schools run by the Society. The learned counsel therefore submitted that there was no reason to interfere with the order passed by the learned Single Judge and the writ petition was liable to be dismissed.

5. We have heard the learned counsel for the parties at length and we have perused the material placed on record. As per the notice issued on behalf of the appellants the period of dispute for paying contribution was from August 1986 to September 1995. While replying to the said show cause notice, the Society stated that the schools in question were recognized by the State Government and except one school that was being run on no grant basis, the other schools

were receiving grants from the State Government. After holding the provisions of the Act of 1952 to be applicable to the Society, it was directed to report compliance from 01.09.1986. The Tribunal while allowing the appeal preferred by the Society has referred to the provisions of Rule 20 of the Rules 1981 and has found that the schools being recognised by the State Government, the Education Society was entitled to claim exclusion/exemption under Section 16(1)((b) of the Act of 1952. The learned Single Judge while entertaining the writ petition preferred by the appellants has referred to the decision in Sanatan Dharam Girls Secondary School (supra) and has found the Tribunal was justified in setting aside the order passed under Section 7-A of the Act of 1952. It was also noted that regular deduction of provident fund was being made as was stated in the affidavit dated 23.04.2009 filed by the Society. This affidavit was filed pursuant to the order passed by the learned Single Judge during the pendency of the said writ petition.

6. Before considering the challenge as raised we find it necessary to refer to the decision of the Hon'ble Supreme Court in Yeshwant Gramin Shikshan Sanstha vs. Assistant Provident Fund Commissioner and ors. (2017) 5 SCC 579. The facts of the said case indicate that the question for determination was with regard to the position of 16 part-time employees of a school and junior college being run by an Education Society. According to the authorities under the Act of 1952 the Education Society was liable to pay contribution for these 16 part-time employees while according to the Education Society it was entitled to claim exemption under Section 16(1)(b) of the Act of 1952, in view of Rule 20 of the Rules of 1981. This Court did not accept the stand of the Education Society and hence that judgment was challenged before the Hon'ble Supreme Court. After referring to the Notification dated 19.02.1982 which has also been relied in the present case, it was held that the Act of 1952 was applicable to all colleges and schools in the State subject to provisions of Section 16 of the Act of 1952. After finding that the provisions of Section 16(1)(a) would not come to the aid of the Education Society therein, the applicability of Section 16(1) (b) of the Act of 1952 was considered. Reference was made to the decision in Sanatan Dharam Girls Secondary School (supra) and it was found that the Act of 1977 alongwith Rules of 1981 as well as Secondary Schools Code were a complete Code in themselves with regard to educational institutions and it was also indicative of the extent of exercise of substantive control by the State Government over such institutions. While doing so the aspect of administrative control as well as the aspect of recognition of educational institutions was taken into consideration. It was thus held that even if an establishment is covered by any one of the excepted category provided under Section 16(1) of the Act of 1952 then the provisions of that Act would have no application to the establishment as a whole and for all purposes. The contention that the Act of 1952 though not applicable to the establishment would nevertheless apply to the part-time employees was not accepted by holding that Section 16 did not envisage a concept of partial exemption from application of the provisions of the Act of 1952 as it operated

qua the establishment for all purposes. Merely because the part-time employees were not eligible for benefits of the State Contributory Provident Fund Scheme, the exemption status of the establishment acquired under Section 16 of the Act of 1952 would not cease or stand withdrawn automatically. An establishment being covered under any one of the excepted category under Section 16 of the Act of 1952, the officials empowered by that Act would have no authority to proceed against such establishment notwithstanding the fact that some of the employees were not eligible for the benefits under the State Contributory Provident Fund Scheme which governed the other employees of the establishment. The judgment of this Court holding otherwise was set aside.

7. The decision in Yeshwant Gramin Shikshan Sanstha (supra) of the Hon'ble Supreme Court clearly answers the question as regards the effect of Rule 20 of the Rules 1981 vis-a-vis the provisions of Section 16(1)(b) of the Act of 1952. In view of the admitted position that all schools run by the Society are recognised by the authority competent to grant such recognition as empowered by the State Government, the ratio of the aforesaid decision would apply to the facts of the case in hand.

We may note that a similar view has been taken by the learned Single Judge in Balasaheb Dempurikar Vidhya Mandir, Umari (supra) while holding that with the introduction of Rule 20 of the Rules of 1981 the authorities under the Act of 1952 would not have jurisdiction to recover the provident fund dues in relation to an employee who has subscribed to the Contributory Provident Fund. In the light of the aforesaid legal position, we find that the Tribunal was legally correct in holding that by virtue of provisions of Section 16(1)(b) of the Act of 1952 read with Rule 20 of the Rules of 1981, the order passed under Section 7-A directing compliance from 1986 onwards was contrary to law. The learned Single Judge therefore did not commit any error by not interfering with the order passed by the Tribunal.

8. As regards the contention raised on behalf of the appellants that fresh material that was not before the Tribunal was considered by the learned Single Judge for maintaining the order of the Tribunal is concerned, it is found from the record that in the said writ petition itself the learned Single Judge on 01.04.2009 had passed the following order :

"After hearing the learned counsel for the parties, it appears that the question involved in this writ petition would be solved to a great extent if the respondent produces the record showing that the payment was made and the subscription was paid under the Contributory Funds Rules (Bombay) as per the provisions of Rule 20 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981, and since when the said contributions are made, on affidavit. The said affidavit may be filed before this Court within a period of three weeks from today."..

Accordingly the list of employees covered by Rule 20 was placed on record. The appellants had an opportunity to counter the material placed on record by the Society pursuant to aforesaid directions. That opportunity however was not availed of. Hence, at this stage, such objection cannot be permitted to be raised. It is also found that in case of any failure on the part of the Education Society in not complying with the requirements of Rule 20 of the Rules of 1981, the authorities under the Act of 1977 are competent to take appropriate action and seek compliance in that regard.

9. Hence for the aforesaid reasons, we do not find any case made out to interfere in appeal. The judgment of the learned Single Judge does not suffer from any jurisdictional error nor can the view as taken be said to be perverse. Consequently the Letters Patent Appeal stands dismissed leaving the parties to bear their own costs.

