
(2016) 03 AP CK 0042
In the Andhra Pradesh High Court
Case No : W.P. No. 25623 of 1998

Regional Provident Fund Commissioner	APPELLANT
Vs	
EPF Appellate Tribunal	RESPONDENT

Date of Decision : 29-03-2016

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 16(1) (b), 16(1)(c), 7I

Citation : (2016) 4 ALT 76 : (2017) 3 AndhLD 451 : (2016) 2 CLR 1023 : (2016) 151 FLR 263 : (2016) LabLR 1266 : (2016) LabLR 1075 : (2017) 1 LLN 147

Hon'ble Judges : Dilip B. Bhosale, ACJ and P. Naveen Rao, J.

Bench : Division Bench

Advocate : Sri G. Venkateshwarlu, Advocate, for the Appellant;

Final Decision : Disposed Off

Judgement

P. Naveen Rao, J.—Whether the private educational institutions are excluded from the coverage of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (for brevity hereinafter referred to as "EPF Act") is the question that falls for consideration in the instant writ petition. By judgment dated 25.04.2001, Division Bench of this Court held that EPF Act is applicable to Private Educational Institutions and allowed the writ petition. Aggrieved thereby, respondent No. 2 Association filed Civil Appeal No. 539 of 2002. By order dated 11.12.2007, Supreme Court remitted the matter for decision afresh by considering the judgments of the Supreme Court in Regional Provident Fund Commissioner v. Sanatan Dharam Girls Secondary School and others, (2007) 1 SCC 268, M.P. Shikshak Congress and others v. RPF Commissioner, Jabalpur and others, (1999) 1 SCC 396 and M/s. D.A.V. College and others v. Regional Provident Fund Commissioner and others, 1988 (Supp) SCC 518.

2. The facts to the extent necessary to consider the issue are as under:

Respondent No. 2 is an Association representing Private Educational Institutions.

On the representation made by the 2nd respondent Association seeking exclusion of the educational institutions run by the members of the Association from the purview of the EPF Act, the Regional Provident Fund Commissioner vide his proceedings No.AP/M.Cell.5/Edn.Insts/ 96/452, dated 30.07.1996, informed the Association that as per the amended Section 16(1)(b)&(c) of the EPF Act, the educational institutions run by the members of the Association are not excluded from the purview of the provisions of the Act and, therefore, requested the Association to advise the members to commence implementation of the Act and schemes framed there under.

3. Against the said order, the 2nd respondent herein preferred appeal before the Employees Provident Fund Appellate Tribunal, New Delhi. It was contended before the Tribunal that members of 2nd respondent association are governed by the provisions of Andhra Pradesh Education Act, 1982 (Act No. 1 of 1982) (for short, "the Education Act") and under the Education Act, there is already a compulsory P.F. Scheme to enroll employees of the educational institutions and, therefore, by virtue of Sections 16(1)(b) and (c) of the EPF Act, the educational institutions are exempted from the purview of the EPF Act. The Tribunal accepted the contention of the 2nd respondent and allowed the appeal. Aggrieved by the said order, the Employees Provident Fund Organization is before this Court.

4. We have heard learned counsel for petitioner at length and gone through the three judgments referred to above.

5. Learned counsel for petitioner contends that the exemption provided by Section 16(1)(b) of EPF Act is applicable only to educational institutions "belonging to" or "under the control of" the Central Government or State Government or any other establishment set up under any Central, Provincial or State Act, where as the private educational institutions do not "belong to" or under the control of the State Government. He further submits that even if this clause is fulfilled, there must be a scheme formulated similar to the scheme under the EPF Act and employees are brought under the said scheme. He further submits that decision of the Supreme Court in Sanatan Dharam Girls Secondary School has no application to the facts of this case. Learned counsel for petitioner, by placing reliance on the decisions of the Supreme Court in M/s. D.A.V. College and M.P. Shikshak Congress, contends that the Appellate Tribunal erred in allowing the appeal.

6. Alternatively, he submits that the appeal would lie to the Appellant Tribunal only in case an order is passed by the competent authority in exercise of power under Sections 1, 3, 7A, 7B, 7C and 14B of the EPF Act and such appeal is maintainable only by the aggrieved person. In the instant case, no decision was made under any of the said provisions and the decision impugned before the Appellate Tribunal was an order passed on the representation submitted by the Association seeking exemption in general to all private educational institutions from application of the provisions of the EPF Act. Thus, Tribunal erred in entertaining the appeal and on that ground also, the order under challenge is

liable to be set aside.

7. The EPF Act is a social welfare enactment envisaged for the benefit of the workmen/employees working in several industries and other establishments. The educational institutions are brought within the purview of the Act, w.e.f. 06.03.1982 by virtue of the notification issued by the Central Government on 19.02.1982.

8. Sections 1 and 16 to the extent relevant read as under:

"Section 1 ? Short title, extent and application

(1) & (2) xxxxx

(3) Subject to the provisions contained in Section 16, it applies ?

(a) to every establishment which is a factory engaged in any industry specified in Schedule 1 and in which twenty or more persons are employed, and

(b) to any other establishment employing twenty or more persons or class of such establishments which the Central Government may, by notification in the Official Gazette, specify in this behalf :

Provided that the Central Government may, after giving not less than two months" notice of its intention so to do, by notification in the Official Gazette, apply the provisions of this Act to any establishment employing such number of persons less than twenty as may be specified in the notification.

(4) Notwithstanding anything contained in sub-section (3) of this section or sub-section (1) of the section 16, where it appears to the Central Provident Commissioner, whether on an application made to him in this behalf or otherwise, that the employer and the majority of employees in relation to any establishment have agreed that the provisions of this Act should be made applicable to the establishment, he may, by notification in the Official Gazette, apply the provisions of this Act to that establishment on and from the date of such agreement or from any subsequent date specified in such agreement.

?.

16. Act not to apply to certain establishments ?

(1) This Act shall not apply ?

(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;

(emphasis supplied)

9. The EPF Act and the schemes framed there under extend the benefits, such

as, provident fund, pension, family pension, children pension and employees deposit linked insurance etc. to the employees working in various establishments including educational institutions. Ordinarily, the provisions of EPF act apply to the private educational institutions.

10. In *M/s. D.A.V. College*, Supreme Court rejected the contention that the provisions of the EPF Act have no application to the educational institutions and directed the petitioners therein to comply with the provisions of the Act and the schemes framed there under.

11. In *M.P. Shikshak Congress (supra)*, proceedings issued by the Regional Provident Fund Commissioner dated 24.04.1991 and 05.07.1991 directing the management of schools to deposit the contribution of the employees" as well as employers" under the provisions of the EPF Act, 1952 was challenged before the Madhya Pradesh High Court. The plea raised was educational institutions were earlier governed by the Central Provinces and Berar Education Manual, 1928 and consequently by the Madhya Pradesh Act, 1978 and, therefore, the provisions of the EPF Act, 1962 are not attracted. Madhya Pradesh High Court considered the said contention and upheld the decision of the Regional Provident Fund Commissioner. Aggrieved thereby managements preferred the above appeal.

12. It was contended that EPF Act, 1952 has no application to the aided schools in the State of Madhya Pradesh. It was further contended that central Act was earlier to the State Act and as State has received assent of the President in accordance with the Article 254(2) of the Constitution, the State Act should prevail.

13. The contention that State Act shall prevail over the Central Act was rejected holding that the State Act only deals with the salaries and other ancillary matters covering such educational institutions and does not deal with Provident Fund or other benefits, for which EPF Act 1952 is made. Thus, there is no repugnancy. Furthermore, by the time the Act was made, the provisions of the EPF Act, 1952 was not extended to educational institutions. For the first time, on 6.3.1982 notification was issued extending the provisions of the Act to educational institutions. Thus, this notification being later to the 1978 Act, the same would prevail even assuming that there is repugnancy. Supreme Court, therefore, held that the provisions of the EPF Act, 1952 are applicable to the educational institutions.

14. The Apex Court was dealing with the provisions of the 1978 Act which were made applicable to those who are not covered by the Central Act and whether there was any conflict between the Provident Act, 1952 (Central Act) and Act No.20 of 1978 enacted by the State Madhya Pradesh and in that situation it was held that clause (2) of Article 254 of the Constitution of India was not attracted and there was no repugnancy between the Central Act and the State Act.

15. The Supreme Court observed as under:

"It was by reason of the notification of 6th of March, 1982 that the Central Act was extended to educational institutions. The employees Provident Fund and Miscellaneous Provisions act, 1952, therefore, became applicable to educational institutions in the State of Madhya Pradesh for the first time on 6th of March, 1982. This was much later than the enactment of the State Act 20 of 1978. The Parliamentary enactment, therefore, would prevail over the State Act 20 of 1978, assuming that the State Act of 1978 created or affected any scheme for provident fund. Act No.1 of 1982 has not made any provisions which were repugnant to the Employees Provident Fund Act, 1952, Article 254(2), therefore, has no application in the present case."

16. Section 16 (1)(b) of the EPF Act provides exemption from the application of the provisions of the EPF Act. To seek exemption from the application of the EPF Act, the educational institution must satisfy the twin conditions:

(i) such establishment either should "belong to" or "under the control of " the Central Government or State Government or setup under any Central or Provincial or State Act; and

(ii) there must exist a scheme or rule framed by the respective governments governing such benefits and such scheme is extended to employees of the institution. Thus, unless these conditions are satisfied, educational institutions cannot ask for grant of exemption.

17. A.P. Education Act, 1982 is a comprehensive legislation in the field of education and is applicable to both states after the bifurcation. It deals with all aspects on establishment of educational institution by private management, elaborately laid down in chapter VI-A, such as registration of private schools, grant of recognition (Ss 33B and 33D); conditions of service of staff (S. 33D); conducting of examination (S.33L and 33M), maintenance of registers and following of syllabus (S. 33F); composition and function of advising body (Ss 33G and 33H); duties of management (S 33N); and inspection (S.33O). Chapter XIV of the Act deals with staff of private educational institutions. It regulates payment of salaries, allowances (S.84); disciplinary action (Ss.79 to 83); and Section 84A prescribes penalties against management if provisions of chapter XIV are contravened. Through these and other provisions of the Act, the State exercises control over the private educational institutions. Thus, the private educational institutions are "under the control" of the State Government. Thus the educational institutions represented by respondent no.2 Association answer the first limb of the requirement under Section 16(1)(b) of the Act.

18. This very issue was considered by the Supreme Court in Sanatan Dharam Girls Secondary School (supra). The Supreme Court held that the words "belong to" and "under the control of" are separated by "or" and, therefore, they deal with different contingencies and apply to mutually exclusive categories of institutions. Supreme Court further held that the word "control" can signify control in all respects on non-governmental educational institutions and various

provisions of the Act, 1989 would signify that State Government has control over the non-governmental educational institutions. The State Government exercises substantive control over the institutions even though the institutions are not owned by it. It has power of superintendence, authority to direct, restrict or regulate the working of the educational institutions. The State Act is a complete code in itself with regard to the educational institutions.

19. A deeper consideration is necessary to appreciate application of second limb of Section 16 (1) (b) of the Act.

20. In *Sanatan Dharam Girls Secondary School (supra)*, the educational institutions challenged the order of the State Government dated 05.08.1987 to implement the provisions of the EPF Act, 1952 to the non-governmental aided institutions and further orders dated 24.01.1998 transferring the existing provident fund amount from the State treasury to the office of the Regional Provident Fund Commissioner.

21. Rajasthan High Court held that State Act would override the provisions of the EPF Act, 1952 and the educational institutions fall under the exception as provided under Section 16(1)(b) of the EPF Act. By separate order the Rajasthan High Court has also upheld the contention of the Educational Institutions against the decision of the State Government directing the educational institutions to deposit their contributions with the Regional Provident Fund Commissioner.

22. Before Supreme Court, on behalf of the Regional Provident Fund Commissioner, it was contended that provisions of the EPF Act made applicable from 06.03.1982 and till Act 1989 came into force from 01.01.1993, there was no State Act in force and, therefore, during the period from 06.03.1982 to 31.12.1992, Central Act would apply. It was further contended that educational institutions which were already covered before the Act, 1989 came into force continued to be covered by the EPF Act even after Act, 1989 came into force.

23. Having regard to these facts, the Supreme Court distinguished the judgment in *M.P. Shikshak Congress (supra)*. Supreme Court observed as under:

"37. In addition to the above, the said case is also distinguishable with regard to the contention of repugnancy and Article 254 (2) of the Constitution. In the said case, the Act in relation to the State of Madhya Pradesh came into force prior to the application of the provisions of the EPF Act, 1952 to educational institutions and therefore the benefit of Article 254(2) was not available to it. In the present case, however, admittedly the State Act has been enacted and has received the assent of the President subsequent to the applicability of the EPF Act, 1952 to the educational institutions. In this regard, this Court in the said case noted as under:

24. On a reading of the provisions in Section 1(3) read with Section 16(1)(b), it is clear that only if the conditions mentioned in Section 16 (1) (b) are satisfied, educational institution is exempted and the burden lies on the individual

educational institution to satisfy the competent authority that it is exempted. The second respondent miserably failed in substantiating that its members answer the second limb of Section 16 (1) (b) of EPF Act.

25. If an educational institution seeks to claim that it need not comply with the obligations under the EPF Act, in addition to the institution being under the control of the State Government, it must also satisfy that there is a similar or more beneficial scheme made under the A.P. Education Act and employees are enrolled into the fund. Merely because the private educational institutions are governed by the A.P. Education Act, 1982, is not sufficient to contend that the EPF Act is not attracted. The burden lies on the individual educational institution to satisfy that his organisation has enrolled its employees under a scheme formulated by the State Government and, therefore, is exempted from the provisions of the Act. It is not clear from the reading of the grounds of appeal before the Appellate Tribunal and in the counter-affidavit filed in this writ petition, whether the scheme is formulated comprehensively covering all the employees of the educational institutions who are members of respondent no.2 Association and whether the educational institutions have enrolled their employees in the scheme. No material is placed on record to show that deductions are made from the salaries of the teachers of these institutions or existence of a scheme for old aged pension or opening of accounts towards contribution of provident fund for the benefit of teachers and other employees. In paragraph 3 of the counter affidavit, though it is averred that Government formulated separate Teachers Provident Fund Scheme, no such scheme is placed on record. It is not stated that the Educational Institutions who are members of respondent Association have extended the scheme to their teachers, the teachers are enrolled; separate accounts are opened and contributions are made.

26. At this stage, we notice that some of the private educational institutions sought to contest the writ petition and have filed implead petitions. By order dated 17.12.1998 this Court dismissed the implead petitions. It is pertinent to note that order passed by the learned single Judge. It reads as under:

"For more than one reason, I do not think that the petitioners can be said to be proper and necessary parties to the writ petition. In the first place, they were not the parties before the Tribunal. Secondly, the question whether the Provident Fund Act applies to the applicants" institutions did not fall for consideration before the Tribunal. Therefore, the applications are dismissed. However, it is made clear that if the Commissioner proceeds against the petitioners herein under the Act, they are at liberty to assail the same in appropriate independent legal proceedings if they are so advised."

27. Furthermore, it is the specific case of petitioner that some of the private educational institutions earlier filed writ petitions in this Court and the said writ petitions were disposed of granting liberty to private educational institutions to avail remedy before the authority under Section 7-A of the E.P.F. Act. It is the specific stand of petitioner that with reference to respective private educational

institutions, the competent authority has passed orders under Section 7-A of the E.P.F. Act and those orders were complied by concerned institutions.

28. Thus, to claim exemption under Section 16(1)(b) of the EPF Act, the burden lies on the individual institution to satisfy the competent authority under the EPF Act, as and when called upon to make the contributions, that in accordance with the provisions contained in A.P. Education Act, 1982 and the Rules made there under, separate scheme is formulated and the employees of the concerned educational institution are enrolled in the said scheme and contributions are made. Whether there exists a scheme and the educational institution has enrolled its employees in the scheme and the institution is making contributions to the said scheme is a matter for consideration by the Regional Provident Fund Commissioner, in a given case as and when such a plea is raised. Association cannot seek general declaration against the authorities under the EPF Act not to enforce the provisions of the Act to its members.

29. Even assuming that the Educational Institutions, who are members of respondent No.2 Association, answer the twin requirements of Section 16 (1) (b) of EPF Act, it has to cross more formidable objection of petitioner on maintainability of Appeal by Association under Section 7-I of the EPF Act.

30. At this stage, it is appropriate to note the provisions of the EPF Act i.e., Sections 3, 7A, 7B, 7C, 7I, 14B of EPF Act. To the extent relevant they read as under:

3. Power to apply the Act to an establishment which has a common provident fund with another establishment:

Where immediately before this Act becomes applicable to an establishment there is in existence a provident fund which is common to the employees employed in that establishment, and employees in any other establishment, the Central Government may, by notification in the Official Gazette, direct that the provisions of this Act shall also apply to such other establishment.

7A. Determination of moneys due from employers:

(1) The Central Provident Fund Commissioner, any Additional Central Provident Fund Commissioner, any Deputy Provident Fund Commissioner, any Regional Provident Fund Commissioner or any Assistant Provident Fund Commissioner may, by order, -

(a) in a case where a dispute arises regarding the applicability of this Act to an establishment, decide such dispute; and

(b) determine the amount due from any employer under any provision of this Act, the Scheme or the Pension Scheme or the Insurance Scheme, as the case may be, and for any of the aforesaid purposes may conduct such inquiry as he may deem necessary.

7B. Review of orders passed under Section 7A.

(1) Any person aggrieved by an order made under sub-section 1 of section 7A, but from which no appeal has been preferred under this Act, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the order was made, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason, desires to obtain a review of such order may apply for a review of that order to the officer who passed the order:

Provided that such officer may also on his own motion review his order if he is satisfied that it is necessary so to do on any such ground.

7C. Determination of escaped amount-

Where an order determining the amount due from an employer under section 7A or section 7B has been passed and if the officer who passed the orders ?

(a) has reason to believe that by reason of the omission or failure on the part of the employer to make any document or report available, or to disclose, fully and truly, all material facts necessary for determining the correct amount due from the employer, any amount so due from such employer for any period has escaped his notice;

(b) has, in consequence of information in his possession, reason to believe that any amount to be determined under section 7A or section 7B has escaped from his determination for any period notwithstanding that there has been no omission or failure as mentioned in clause a on the part of the employer, he may, within a period of five years from the date of communication of the order passed under section 7A or section 7B, re-open the case and pass appropriate orders re-determining the amount due from the employer in accordance with the provisions of this Act:

Provided that no order re-determining the amount due from the employer shall be passed under this section unless the employer is given a reasonable opportunity of representing his case.

??.

14B. Power to recover damages-

Where an employer makes default in the payment of any contribution to the Fund the Pension Fund or the Insurance Fund or in the transfer of accumulations required to be transferred by him under sub-section 2 of section 15 or sub-section 5 of section 17 or in the payment of any charges payable under any other provision of this Act or of any Scheme or Insurance Scheme or under any of the conditions specified under section 17, the Central Provident Fund Commissioner or such other officer as may be authorised by the Central Government, by notification in the Official Gazette, in this behalf may recover from the employer by way of penalty such damages, not exceeding the amount of arrears, as may

be specified in the Scheme.

Provided that before levying and recovering such damages, the employer shall be given a reasonable opportunity of being heard.

Provided further that the Central Board may reduce or waive the damages levied under this section in relation to an establishment which is a sick industrial company and in respect of which a scheme for rehabilitation has been sanctioned by the Board for Industrial and Financial Reconstruction established under section 4 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986), subject to such terms and conditions as may be specified in the Scheme.

7-I. Appeals to Tribunal

(1) Any person aggrieved by a notification issued by the Central Government, or an order passed by the Central Government or any authority, under the proviso to sub-section (3), or subsection (4) of section 1, or section 3, or sub-section (1) of section 7A, or section 7B [except an order rejecting an application for review referred to in subsection (5) thereof], or section 7C, or section 14B, may prefer an appeal to a Tribunal against such notification or order.

(2) Every appeal under sub-section (1) shall be filed in such form and manner, within such time and be accompanied by such fees, as may be prescribed. {Inserted by Act 33 of 1988, section 11 (w.e.f. 1-7-1997)}

31. The Appellate Tribunal is a creature of EPF Act. It has to act within the four corners of the Act. It acquires jurisdiction to consider an appeal only if an appeal is filed under Section 7-I of the EPF Act against order made in exercise of power under any of the provisions in Sections 1 (3) & (4), 3, 7A, 7B, 7C and 14B. Only a person aggrieved by an order made under any of the above provisions can maintain appeal under Section 7-I. In the instant case, no order was passed by the competent authority under any of the above provisions.

32. The respondent no. 2 Association submitted representation to E.P.F. Commissioner to grant general exemption to private educational institutions in the composite State of Andhra Pradesh from the application of provisions of EPF Act. Said request was rejected in exercise of administrative powers vested in the Regional Provident Fund Commissioner as Regional head of E.P.F. Organization. It is not an order made in exercise of quasi judicial powers under various provisions referred to above. It is useful to extract the relevant portion of the order of Regional Provident Fund Commissioner, which was challenged before Appellate Tribunal. It reads as under:

"No.A.P/M.Cell.5/Edn.Insts/96/452

Dated: 30.7.1996

To

Sri N. Anjaiah

General Secretary,

A.P. Private Vidya Samsthala Sangham,

7-1-408, Vignan Bhavan, Ameerpet,

Hyderabad ? 500 016

Sub: Applicability of the E.P.F. & MP Act, 1952 to the Private Educational Institutions: Reg:-

Sir,

Please refer to your letter dated 27.6.96 addressed to the Additional; Central P F Commissioner (SZ) and copied to this office on the above subject.

??

?..

You are, therefore, requested to advise all the Educational Institutions under A.P. Private Vidya Samstala Sangham to commence implementation of the Act and Schemes framed thereunder from the date of their coverage under the Act by remitting all amounts due and by submitting all monthly and yearly returns and challans immediately. Failing which this office shall be constrained to take all necessary actions as contemplated under the Act without any further notice."

33. Relying on the said letter, specific objection was raised by petitioner herein before the Appellate Tribunal on maintainability of appeal. Without recording finding on the said objection appeal was decided on merits. As the order impugned was not made under any of the above provisions, no appeal would lie to the E.P.F. Appellate Tribunal. The appellate Tribunal erred in entertaining appeal and granting relief as sought for by the second respondent. Thus, the order of Appellate Tribunal is without jurisdiction and competence and liable to be set aside on that ground alone.

34. For all the aforesaid reasons, the point is answered in favour of the writ petitioner and the order impugned in the writ petition is set aside. It is made clear that this order does not preclude individual private educational institutions to represent to the Regional Provident Fund Commissioner seeking exemption, by satisfying him that they fulfil twin conditions mentioned in Section 16 (1) (b) of EPF Act. The writ petition is accordingly disposed of. All miscellaneous petitions stand disposed of.