(2014) 07 DEL CK 0315

In the Delhi High Court

Case No : RSA No. 54/1991

Regional Provident Fund Commissioner — APPELLANT

Vs

Lovely Bal Shiksha Parishad — RESPONDENT

Date of Decision : 01-07-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Delhi School Education Act, 1973 — Section 3, 7, 8
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 10, 13, 14, 15, 16(1)(b)

Citation : (2014) 6 AD 291 : (2014) 143 FLR 305

Hon'ble Judges : Valmiki J. Mehta, J

Bench : Single Bench

Advocate : Rajesh Yadav, Ruchira V. Arora and Rajan Chawla, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.—This second appeal was admitted on 23.7.1992 by framing the following substantial questions of law:-

1. Whether on a proper construction of the notification/circular dated 8th of February 1983 issued by the Central Provident Fund Commissioner, respondent No. 1 is exempted from applicability of the provisions of the Employees'' Provident Fund & Misc. Provisions Act, 1952?

2. Whether jurisdiction of the civil courts to entertain the suit is barred by Section 7A of the Act.?

2. Learned counsel for the respondent/school has drawn my attention to a recent judgment passed by the Supreme Court in the case of Regional Provident Fund Commissioner Vs. Sanatan Dharam Girls Secondary School and Others, and wherein the appellant herein was also the appellant before the Supreme Court. This judgment interprets Section 16(1)(b) of the Employees Provident Funds and

Miscellaneous Provisions Act, 1952 (in short ''EPF Act, 1952''). Supreme Court has held that private schools which are governed and controlled by the State Acts of Education, would be "under the control of" the State as per the meaning of the expression as found in Section 16(1)(b) of the EPF Act, 1952. Supreme Court in this judgment has clarified that there is a difference between the expressions "belonging to" and "under the control of" as appearing in Section 16(1)(b) of the EPF Act and that the result of the difference is that even private schools which are under the control of the States under various State Education Acts, would be schools under the control of the State Government.

3. The relevant paras of the judgment in the case of Sanatan Dharam Girls Secondary School (supra) are paras 28 to 35 and which read as under:-

28. We heard the parties in detail. The submissions made by the learned Counsel appearing for the respondents merit acceptance. It is not in dispute that the respondent-institutions have been paying the provident fund dues to the State Government in accordance with the Scheme framed by the State Government under the State Act and thus the employees of the respondent-institutions are entitled to the benefit of the provident fund. By the orders impugned by the respondent-institutions, the State Government has sought to transfer the balance standing to its credit to the Regional Provident Fund Commissioner. Thus it is clear that the respondent-institutions have been paying in accordance with the Scheme and there is no grievance with regard to the same.

29. In respect to the contention of the respondent that the establishment belonging to or under the control of the Central Government or a State Government, it was submitted that the establishments must either be (a) belonging to or (b) under the control of the Central Government or the State Government. In our view, the two words used in the said Section have different connotations. The words "belonging to" signifies ownership i.e. the Government owned institutions would be covered under the said part and the words "under the control of" signifies control other than ownership since ownership has already been covered under the words "belonging to". It must be also noted that the two words are separated by the word "OR" and therefore these two words refer to two mutually exclusive categories of institutions. While the institutions "belonging" to the Central or the State Government would imply the control of the State but the privately owned institutions can be "under the control of" the Government in various ways.

30. Under the State Act itself, the "Control" by the State is in the following ways:

(a) u/s 3 of the State Act, the State Government grants recognition to the "Non-government educational institutions.

It was submitted that recognition by the State is of prime importance for running and operating an educational institution. The said recognition can be withdrawn on the failure of the institution to abide by the terms and the conditions of the grant of recognition.

(b) u/s 7 of the State Act, the State Government grants aid to only recognized educational institutions. The aid given by the State can be used only for the purpose for which the aid has been given. u/s 8, the institutions are thereafter required to keep accounts in the manner prescribed by the State. It was submitted that in such manner, the State exercises Financial Control over the institutions.

(c) u/s 9, it has been prescribed that the institutions shall be governed by a managing committee and Section 10 of the Act empowers the State to take over management of the institutions "whatever it appears to the State that the Managing Committee has neglected to perform the duties assigned to it by or under the Act or the Rules made thereunder.

(d) Chapter V of the Act relates to properties of the institutions and the manner in which the institutions can manage the properties of the institution. It was submitted that u/s 13 of the Act, the institutions have to apply and get the approval of the competent authority set up under the said Act before transferring the management of the institution. u/s 15, restrictions have been placed on the transfer of immovable properties of the institutions.

(e) Section 14 of the Act prohibits closure of any institution or its class or the teaching of any subject therein without notice in writing to the competent authority. It was submitted that the government thus has Functional control over the institution.

(f) Chapter VI of the State Act deals with recruitment and removal etc. of employees. Their salary, conditions of service, provident fund, code of conduct are all prescribed under the Act. The Act further prescribes setting up of a Tribunal for resolution of the disputes whose decision is final and binding on the parties.

31. The State Government also exercises Administrative Control over the institution. Section 17 deals with the manner of recruitment and Section 18 deals with the procedure in which the employees may be removed or dismissed or reduced in rank. Section 28 permits the State Government to prescribe the code of conduct of the employees and Section 29 enjoins upon the institutions not to give to its employees a pay lesser than the scales of pay and the allowances paid to similar categories of the State Government.

32. In our view, the State Act is a complete code in itself with regard to the educational institutions and the State Government exercises substantive control over the institutions even though the institutions are not "owned" by it. The word "control" has not been defined under the EPF Act, 1952.

33. However, this Court in The Shamrao Vithal Co-operative Bank Ltd. Vs. Kasargod Pandhuranga Mallya, has cited with approval the meaning of the word "control" as it appears at page 442 of Words & Phrases Vol. 9, Permanent Edition as under:

The word "control" is synonymous with superintendence, management or authority to direct, restrict or regulate.

34. In the case of State of Mysore Vs. Allum Karibasappa and Others, , this Court defined the words "word control" as under:

The word "control" suggests check, restraint or influence Control is intended to regulate and hold in check and restrain from action.

35. We further observe that the State Government has the power of Superintendent or the authority to direct, restrict or regulate the working of the educational institutions. It was, therefore, submitted that the institutions had satisfied both the conditions (i) and (ii) mentioned above and as such they would fall within the exception contained u/s 16(1)(B) of the EPF Act, 1952.

4. The respondent-plaintiff-school is admittedly functioning under the control of the Govt. of NCT of Delhi through the Director of Education functioning under the Delhi School Education Act and Rules, 1973. The Delhi School Education Act and Rules 1973 contain wide, varied and detailed provisions pertaining to control of the schools by the Delhi State Government and such rules include rules with respect to payment of provident fund (Rule 126 of Delhi School Education Rules) etc. Para 11 of the judgment of the trial court dated 23.2.1990 refers to a document being exhibited as Ex. PW1/2 and which is a certificate issued by the Director of Education certifying that the employees of the respondent/plaintiff/ school are enjoying the facility of provident fund, pension and other benefits as are available to employees of the Delhi Administration (now Government of NCT of Delhi). PW-2 in his deposition has also deposed with respect to the society of the school creating a registered trust for the security amount of the provident fund of their employees and the registered trust is approved by the Income Tax Department. The trust deed was exhibited as Ex. PW2/4. Para-12 of the judgment of the trial court also refers to the fact that the respondent/plaintiff/ school is duly complying with the provident fund scheme and depositing the provident fund of the employees in the bank account, the statements with respect to which have been proved as Ex. PW 2/6 and Ex. PW2/7. Para 13 of the trial court judgment refers to the fact that the school is in fact giving more benefits to its employees as regards provident fund than as compared to benefits under the EPF Act.

5. Before the courts below, the case was decided on the basis of applicability of Section 16(2) of the EPF Act, 1952, however, that section will not apply to the facts of the present case because Section 16(2) talks of a general notification for a class of institutions and not for an individual institution which would be in fact governed by Section 16(1)(b) of 1952 Act. The Supreme Court in the judgment in the case of Sanatan Dharam Girls Secondary School (supra) has laid down the ratio that when a private unaided school is governed by a State Education Act, then, the State Government exercises its control over such private unaided school and such a school would be an institution which would fall within the

scope of the expression "under the control of" as found in Section 16(1)(b) of the EPF Act, 1952. Therefore, the judgments of the courts below have to be sustained, though not u/s 16(2) of the EPF Act, 1952, but as per Section 16(1)(b) of the EPF Act, 1952 read with the ratio of the judgment of the Supreme Court in the case of Sanatan Dharam Girls Secondary School (supra).

6. In exercise of powers u/s 100 sub-Section 4 CPC, for the disposal of the present appeal, I frame the following substantial question of law in addition to the questions of law which were framed on 23.7.1992:-

Whether the respondent/school is entitled to the benefit of Section 16(1)(b) of the Employees'' Provident Fund & Misc. Provisions Act, 1952 in view of the judgment of the Supreme Court in the case of Regional Provident Fund Commissioner Vs. Sanatan Dharam Girls Secondary School and Others, ?

7. In view of the discussion given hereinabove, questions of law framed on 23.7.1992 would not be called for decision inasmuch as the issue in the present case is not of the applicability of Section 16(2) of the EPF Act, 1952 but of Section 16(1)(b) of the said Act. The third substantial question of law framed by this Court today is answered in favour of the respondent in view of the categorical ratio of the judgment of the Supreme Court in the case of Sanatan Dharam Girls Secondary School and Others (supra).

8. In view of the above, the appeal is dismissed, leaving the parties to bear their own costs.