
(1990) 08 BOM CK 0057
In the Bombay High Court
Case No : Writ Petition No. 2003 of 1981

R.N. Shah and Others

APPELLANT

Vs

The Regional Provident Fund Commissioner

RESPONDENT

Date of Decision : 17-08-1990

Acts Referred:

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

Citation : (1991) 62 FLR 881 : (1995) 3 LLJ 606

Hon'ble Judges : M.L. Pendse, J;M.F. Saldanha, J

Bench : Division Bench

Advocate : C.V. Singh, instructed by Bhaishankar Kanga and Girdharlal, for the Appellant; R.V. Desai and Menon, for the Respondent

Final Decision : Allowed

Judgement

Pendse, J.—The Petitioners are two of the Members of the Managing Committee appointed by National Spiritual Assembly of the Baha'is of India and are entrusted with running and conducting the Boarding High School known as New Era High School at Panchgani in Satara District of this State. The School is a Residential School and the pupils are admitted and fees charged include boarding expenses also. The School runs a kitchen where meals are prepared both for pupils and masters. No one who is not connected with the school is permitted to partake of the food in the mess. The mess run by the school was part and is an integral part of the school. According to the Petitioners, the school has employed about 14 persons in the mess for preparation of food.

2. The Employees' Provident Funds and Miscellaneous Provisions Act, 1952 was enacted by the Central Government and came into force from March 4, 1952. Section 1(3) inter alia provides that it applied (a) to every establishment which is a factory engaged in any industry specified in Schedule I 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. In

pursuance of powers conferred u/s 1(3)(b) of the Act, the Central Government published a Notification dated March 15, 1973 in Government Gazette and specified that every mess, not being a military mess, employing 20 or more persons, as the Class of establishments to which the said Act shall apply with effect from 31st March 1973. The explanation provides that mess means a place where food is served on payment made or promised to be made.

3. On February 29, 1980, the Office of the Regional Provident Fund Commissioner served notice upon the School informing that the mess run by the School is an establishment to which the Act shall apply with effect from 31.1.1977 and, therefore, the school should implement the provisions of the Employees' Provident Fund Scheme with effect from 1.2.1977, Family Pension Scheme with effect from January 1, 1980 and Deposit Linked Insurance Scheme with effect from February 2, 1977. A Notice dated January 7, 1981 was served on the school and the School was informed that the School was guilty of non-submission of returns as required by the Act and threatened that prosecution would be launched for failure to do so. The School authorities then informed the Regional Provident Fund Commissioner that the School has already implemented Provident Fund Scheme for benefit of the employees. The Commissioner again insisted that the School should implement the Scheme prescribed under the Act in spite of the protest by the School that the mess run by the School is not an establishment and cannot be covered under the Act. The refusal of the Commissioner to accede to claim made by the School has given rise to the filing of this Petition under Article 226 of the Constitution of India.

4. Shri Singh, learned Counsel appearing on behalf of the Petitioners, submitted that the impugned Notification dated March 15, 1973 is not attracted to the mess run by the School. The learned Counsel urged that the mess run by the School can by no stretch be termed as an establishment, not being a separate and independent establishment but an integral part of the School. The learned Counsel also urged that the explanation to the impugned notification makes it clear that the mess run by the residential school is not covered by the Notification. We find considerable merit in the submission urged by the learned Counsel. It is necessary to state at this juncture that though the Petition raises other contentions to challenge the legality of the notification, it is not necessary to examine these contentions as the relief can be granted to the school on the narrow ground that notification is not applicable to the mess run by the residential school. The explanation to the impugned notification dated March 15, 1973 makes it clear that the mess covered by the notification means a place where food is served on payment made or promised to be made. In the mess run by the residential school food is not served on payment or promised to be made. The School fees settled by Management includes charges both for boarding and lodging and the food is not served to the pupils according to the demand nor there is any option to the pupils to accept the food or not. Food served to the pupils in the mess run by the residential school cannot be compared to a place where food is served on payment. The pupils admitted to the residential school

have no option but to take their food in the mess. Indeed residence in the campus and sharing the food with other students is a part of education which is of importance in residential school. The Management of the residential school desires that the students must live in the campus and share the food with the companions so as to enable them to develop a feeling of affinity with fellow-students. The residential school expects over all development of pupils and that goal can be achieved provided the pupil live together and share the same food. Shri Desai, learned Counsel appearing on behalf of the Respondent, submitted that the pupils are required to pay for the food served in the mess though the payment is not separately received but forms part of the overall fees settled by the School while giving admission to the pupils. The submission overlooks that there is no option to the students to partake of the food or not nor the choice is left to the students as to what food they will consume. In our judgment, mess run by a residential school cannot be treated as a place where food is served on payment. On this issue, it is obvious that the impugned notification cannot be applied to a mess run by the residential school.

5. It also cannot be overlooked that the mess run by the residential school cannot be termed as a separate and distinct unit from that of the School itself. To be termed as an "establishment" u/s 1(3)(b) of the Act, there must be existence of a separate establishment and identifiable unit which engages more than 20 persons. The mess run by the residential school is not a separate and distinct identifiable unit and it is a common knowledge that employees do not necessarily work in the mess of a residential school but perform their duties also in the school. In our judgment, the mess run by the residential school is an integral part of the school and not of independent establishment within the meaning of the Act and hence the notification has no application to such residential mess even assuming that more than 20 persons are employed. Shri Singh invited our attention to the decision. *Indian Institute of Technology Vs. Regional P.F. Commissioner*, where identical view was taken in respect of mess run by Indian Institute of Technology, Madras. While examining the application of the impugned notification to such mess, we are in respectful agreement with the view taken by the learned Single Judge of the Madras High Court. Shri Desai invited our attention to the decision of a Single Judge of Punjab and Haryana High Court reported in *C.M.C. & B. Memorial Hospital v. R.P.F. Commissioner, Chandigarh* 1982 LIC 952, where the question arose as to whether a hospital attached to medical college forms an integral part of the college and if so, whether the provisions of the Act can be applied to the hospital as an independent establishment. In our judgment, the decision of the Punjab and Haryana High Court turns on the facts of that case and no principle can be spelt out from this decision so as to hold that the mess run by a residential school would attract the impugned notification. In our judgment, the action of the respondent in assuming that the notification applies to the mess run by the residential school is entirely erroneous and the Petitioners are entitled to the relief.

6. Accordingly, Rule is made absolute and it is declared that the Notification

dated March 15, 1973 is not applicable to the mess run by the New Era High School, Panchgani and the Regional Provident Fund Commissioner is restrained from applying the provisions of the Act to this mess. In the circumstances of the case there will be no order as to costs.