

(2007) 05 BOM CK 0010

In the Bombay High Court

Case No : Writ Petition No's. 4590 and 6064 of 2005

R.V.P.R.T. Ayurved Mahavidyalaya

APPELLANT

Vs

Assistant Provident Fund Commissioner and Others

RESPONDENT

Date of Decision : 04-05-2007

Acts Referred:

Bombay High Court (Appellate Side) Rules, 1960 — Rule 18, 4
Constitution of India, 1950 — Article 227, 30, 30(1), 30(2), 337
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 6, 7A

Citation : (2007) 4 ALLMR 584 : (2007) 4 MhLj 273

Hon'ble Judges : A.B. Chaudhari, J

Bench : Single Bench

Advocate : A.M. Ghare, for the Appellant; R.S. Sundaram, for Respondent Nos. 1 and 3, S.Y. Deopujari, A.G.P. in W.P. No. 4590 of 2005 for Respondent No. 2 and O.D. Kakde, A.G.P. for Respondent No. 2 in W.P. No. 6064 of 2005, for the Respondent

Final Decision : Dismissed

Judgement

A.B. Chaudhari, J.—Rule. Rule returnable forthwith. Heard finally by consent of parties.

2. These petitions are treated as under Article 227 of the Constitution of India. These petitions involve common question of law and therefore they are being disposed of by this judgment. The orders made by respondents 1 and 3 are under challenge. By amending the writ petition, the petitioner has introduced prayer Clause A(1) to question the validity of communication dated 10-12-2002 issued by respondent No. 4 Annexure-E.

3. Facts:

The petitioner is an Ayurved College situated at Akola receiving cent per cent grants from the Government of Maharashtra for payment of salaries to all the teaching and non-teaching employees. On 30-3-2005 the first respondent made an order under the provisions of Section 7A of Employees Provident Fund and

Miscellaneous Provisions Act, 1952 (for short the Act) directing the petitioner to deposit an amount of Rs. 06,02,802/- towards the difference of provident fund amount for the period from October, 1997 till February, 2003. The said order made by the 1st respondent was confirmed in appeal by the Appellate Authority, who is respondent No. 2 herein.

4. Arguments:

Mr. Ghare, learned Counsel for the petitioner in both the petitions, at the outset pointed out to me that by amendment prayer Clause A(1) been inserted in the writ petition with appropriate pleadings at appropriate place and amended prayer has been made for issuing directions to respondent No. 2 - State of Maharashtra, to release the Provident Fund contribution to the petitioner-employer in entirety and, therefore, he submitted that the petition will have to be now heard by the Division Bench. He then pointed out Rule 4 of Chapter XVII of the Bombay High Court, Appellate Side Rules, 1960 and argued that since the matter pertains to Division Bench, this Court cannot decide the present writ petition.

5. Mr. Ghare, learned Counsel for the petitioner in both the petitions, argued that admittedly the petitioner has been receiving cent per cent grants from the Government of Maharashtra towards the payments of salary of its teaching and non-teaching employees since the beginning. He then argued that not only that, the Government of Maharashtra has admittedly been paying the provident fund contribution of the employer at the rate of 8.33% along with the salary grant from the beginning. He then stated that the rate of provident fund contribution came to be enhanced from 8.33% to 10% and thereafter to 12%. He therefore submitted that the difference of 3.67% with effect from October, 1997 till February, 2003 due to revision of rate by the Central Government has to be paid by the Government of Maharashtra as the Government of Maharashtra was paying at the old rate of 8.33%. He then submitted that the petitioner being cent per cent aided by the Government and not having any other independent income, the State Government was liable to pay the said difference of amount in satisfying the liability projected by the Provident Fund Organization. To a specific query by the Court as to whether the petitioner had any other ground to challenge the orders of the Provident Fund Organization, Mr. Ghare candidly submitted that there was no other ground for challenging the said orders except the ground that it was the Government of Maharashtra which was responsible to make the payment of difference of provident fund amount and not the petitioner-employer.

6. Per contra, Mr. Sundaram, learned Counsel for respondents 1 and 3, submitted that the provident fund organization was concerned in recovering the provident fund contribution of the employer and employees and the organization was under statutory obligation to implement the provisions of the Act and the scheme thereunder. He then submitted that the Central Act does not in any way provide for any such facility or concession to the employer to claim the employer's contribution from any of the Governments nor the same could be a reason to

resist the demand for employer's contribution. He then submitted that under the provisions of the Act, the Central Government was empowered to revise the contribution of employers and employees and accordingly the same was revised from time to time and now the same is at 12%. Mr. Sundaram then submitted that no other ground was raised by the petitioner either before respondent No. 1 or respondent No. 3 - Appellate Authority except the said ground that the Government of Maharashtra was liable to pay the said amount of difference of contribution of employer towards the Provident Fund because the State Government has been paying the salary grants and the 8.33% employer's contribution in the past. In his submission, this is no ground to shift the liability of the employer created by the Central Act. Finally he prayed for dismissal of the writ petitions.

7. Mr. Deopujari, learned A.G.P. for respondent No. 4, submitted that the petitioner did not place on record any policy decision of the State Government to make payment as demanded nor has relied on any provisions of Central or State legislation. He submitted that the financial position of the State of Maharashtra is known to one and all and that it is reeling under tremendous financial stress. He then submitted that the petitioner has not disclosed any legal right for making the claim against the Government of Maharashtra for the grants towards contribution of the employer to the provident fund organization. The learned A.G.P. submitted that it appears from the communication dated 10-12-2002 that the State Government has taken a policy decision to ask all the grant-in-aid colleges to whom the letter is addressed, to make payment of revised employer's contribution on their own as the State was not in a position to shoulder the said additional financial burden.

8. In reply to the submission made by Mr. Ghare about hearing of the matter by Single Judge, Mr. Deopujari points out that the original prayer in the writ petition related to the challenge to the orders of the provident fund authority and the Appellate Authority under the Central Act. He submitted that Entry No. 29 under Rule 18 of Chapter 17 of the Appellate Side Rules pertains to the orders made under the Employees Provident Fund and Miscellaneous Provisions Act, 1952. He, therefore, submits that there is no doubt that the main prayers (A) and (B) relate to the challenge to the orders made by the authority under the Act and, therefore, the matter pertains to the jurisdiction of Single Judge. He then submitted that the challenge to the communication dated 10-12-2002 made by the petitioner is totally out of context because what has been challenged in the writ petition are the orders made by the statutory authority under the Act and merely because the prayer has been amended, the petition cannot pertain to Division Bench. Alternatively, he argued that this Court will have to decide the validity of the orders made by provident fund authority and Appellate Authority and so far as prayer Clause 1(A) is concerned, the petitioner can be allowed to agitate the same before the Division Bench as the petitioner cannot be allowed to mix up the said cause of action with the present one.

9. Consideration:

Having heard the learned Counsel for the rival parties, at the outset, I will have to deal with the first question raised by Mr. Ghare about the competence of Single Judge to decide the present petition in view of the amended prayer Clause A(1) to the writ petition. Perusal of the entire writ petition and the orders filed in the writ petition clearly show that the writ petition has been filed to question the correctness or otherwise of the orders made by respondent No. 1 and the Appellate Authority. By these orders, the liability of employer towards provident fund contribution has been settled. Reading of these orders would show that the petitioner had raised the only argument before the Appellate Authority that it was the Government of Maharashtra who was responsible to make payment of employer's share towards provident fund contribution to the provident fund organization because the Government of Maharashtra has been paying the salary grants and also contributing at the rate of 8.33% in the past. This only contention has been found to be devoid of merits and has been rejected. It has been observed in the impugned appellate order that as per the provisions of the Act, the authority u/s 7A has nothing to do with the grant from the State Government and plain reading of the Act would show that it is the employer who has to deposit the employer's contribution of provident fund. In other words, the only contention that was raised has not found favour with the Appellate Authority also. It is this order which is under challenge in the present writ petitions on the same ground.

10. Merely because the petitioner has amended the writ petition and sought a direction to the State Government for releasing the employer's contribution towards provident fund, it cannot be said that this Court should mechanically hold that the matter would pertain to Division Bench. This Court is under duty to adjudicate upon the correctness or otherwise of the impugned orders made by the provident fund authority and the Appellate Authority. This Court, therefore, strongly feels that it should not abdicate its function of deciding the validity of those orders which under the Appellate Side Rules as per Entry No. 29 is required to be decided by the Single Judge. The argument made by Mr. Ghare that the petition should be transferred to Division Bench for hearing is therefore rejected.

11. Now coming to the merits of the case, as earlier pointed out, the only ground raised before the Appellate Authority as well as before this Court by Mr. Ghare is that since the State Government has been paying employer's provident fund contribution at 8.33% in the past, it must also pay at the revised rate, as decided by the Central Government, i.e. firstly at 10% and then at 12%. I made a specific query to Mr. Ghare, as to whether there is any other ground to challenge. He answered saying that except this ground, no other ground is raised in support of the petition. I, therefore, repeatedly asked Mr. Ghare to show the legal and enforceable right of the petitioner to press into service such a ground. I also asked him to show any provision under any Government Resolution or Act or

Rules whereby the petitioner could make such claim to assail the orders impugned. Mr. Ghare stated that presently he cannot show any provision under any law muchless State or Central or Rules or Regulations and, therefore, he was not in a position to show a legal right in raising such a plea. In the absence of any legal right, I fail to understand as to how the petitioner can claim that employer's/petitioner's contribution to provident fund organization should be paid by Government of Maharashtra from grant-in-aid.

12. Insofar as the issue regarding grant-in-aid is concerned, in my opinion, the Government of Maharashtra has been providing for 8.33% by way of grant for payment of employer's contribution since over 35 years to the aided colleges. In my opinion, providing for grant-in-aid to a new school or college for spreading education is with a view to help the newly opened institution to settle for catering to the need of the society. Insofar as payment of provident fund contribution under the provisions of the Act is concerned, the Central Act clearly provides that it is the responsibility of the employer to make payment of the employer's contribution towards provident fund. Section 6 of the Act reads thus:

6. Contributions and matters which may be provided for in Schemes

The Contribution which shall be paid by the employer to the Fund shall be (ten per cent) of the basic wages, (dearness allowance and retaining allowance (if any) for the time being payable to each of the employees (whether employed by him directly or by through contractor,) and the employees' contribution shall be equal to the contribution payable by the employer in respect of him and may, [if any employee so desires, be an amount exceeding (ten per cent) of his basic wages, clearness allowance and retaining allowance (if any), subject to the condition that the employer shall not be under an obligation to pay any contribution over and above his contribution payable under this section]:

[Provided that in its application to any establishment or class of establishments which the Central Government, after making such inquiry as it deems fit, may, by notification in the Official Gazette specify, this section shall be subject to the modification that for the words (ten percent), at both the places where they occur, the words (twelve per cent) shall be substituted]:....

The grant-in-aid that has been given by the Government of Maharashtra to the institutions is for payment of salary to the employees and there is absolutely no component of payment of employer's contribution under the grant-in-aid scheme, I fail to understand when the Central legislation obligates the employer to make payment of employer's contribution towards provident fund and no responsibility is cast on the State Government still the Government of Maharashtra took the responsibility of paying 8.33% of petitioner/employer's contribution. It is true that the progressive State like Maharashtra might be justified in making payment of cent per cent grants to the payment of salary of employees but insofar employer's share of contribution towards provident fund is concerned, neither the Central Act nor the State Act nor the Constitution of India

and in particular Article 337 of the Constitution provide for any such obligation of the State. There does not appear to be any justification for the Government of Maharashtra which is reeling under the financial stress to make payment towards employer's contribution to the provident fund organization for the institutions which are being paid cent per cent grants for the salary of teaching and non-teaching employees. The Hon'ble Supreme Court in paragraph 141 in the case of T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, has observed thus:

The grant of aid is not a constitutional imperative. Article 337 only gives the right to assistance by way of grant to the Anglo-Indian community for a specified period of time. If no aid is granted to anyone, Article 30(1) would not justify a demand for aid, and it cannot be said that the absence of aid makes the right under Article 30(1) illusory. The founding fathers have not incorporated the right to grants in Article 30, whereas they have done so under Article 337; what, then, is the meaning, scope and effect of Article 30(2)? Article 30(2) only means what it states, viz., that a minority institution shall not be discriminated against when aid to educational institutions is granted. In other words the State cannot, when it chooses to grant aid to educational institutions, deny aid to a religious or linguistic minority institution only on the ground that the management of that institution is with the minority. We would, however, like to clarify that if an abject surrender of the right to management is made a condition of aid, the denial of aid would be violative of Article 30(2). However, conditions of aid that do not involve a surrender of the substantial right of management would not be inconsistent with constitutional guarantees, even if they indirectly impinge upon some facet of administration. If, however, aid were denied on the ground that the educational institution is under the management of a minority, then such a denial would be completely invalid.

13. Following the aforesaid decision of Supreme Court, the Division Bench of this Court in the case of Keraleeya Samajam and Others Vs. State of Maharashtra and Others, observed in paragraph 18 as under:

Thus, grant-in-aid cannot be claimed as of right. There is no legal or constitutional right insofar as grant in aid is concerned. The Rules set out above themselves make the aforesaid aspect clear. The rules provide for grant-in-aid from public funds. All grants are subject to availability of funds and no secondary school can claim the same as of right. Therefore, even if the petitioners are in a position to apply for grant-in-aid, despite the condition set out in the permission granted to them, yet, there is no enforceable right of the petitioners by which they can compel authorities to either consider their request or grant them aid. This aspect is not at all disputed before us. If there is paucity of funds, which fact is also not disputed, the State cannot be compelled to pay grant, even if the funds are not available to each and every school, more so to the schools who have accepted to open them on permanent no grant basis.

14. Following the aforesaid observations, I hold that there is no substance in the

ground raised by the petitioner to question the validity of the impugned orders. Since, as observed above, it is neither a legal nor constitutional right of the petitioner to claim grant from the State Government, the claim as made by the petitioner is also without any merit. In my opinion, considering the position that the State is under tremendous financial pressure and there is no obligation anywhere for the Government of Maharashtra to make payment of employer's contribution towards the provident fund, it will be necessary for the State of Maharashtra to reconsider its policy to make payment of even 8.33% employer's contribution to the provident fund organization.

15. In the result, the impugned orders made by respondents 1 and 3 are legal and correct and the same are hereby confirmed. Insofar as the petition pertaining challenge to the said orders is concerned, same is dismissed. Insofar as prayer Clause A(1) to the writ petition is concerned, I do not decide the validity thereof and leave the petitioner to claim relief if the petitioner has any legal right by filing an independent petition. Consequently, I do not decide the validity of the communication dated 10-12-2002 nor do I decide the second part of the prayer in prayer Clause A(1) keeping liberty open to the petitioner to challenge the same or seek directions as in prayer Clause A(1).

16. In the result, petitions are dismissed with costs quantified at Rs. 10,000/- per petition payable to respondents 1 and 4 within four weeks from the date of this order.

17. Prayer for suspension of this judgment made by learned Counsel is rejected.