

**(1997) 02 KAR CK 0024**

**In the Karnataka High Court**

**Case No : Writ Petition No. 10859 of 1991**

Shri Narayana Guru English Medium School, Alake, Kudroli,  
Mangalore

**APPELLANT**

**Vs**

Regional Provident Fund Commissioner, Mangalore

**RESPONDENT**

**Date of Decision : 11-02-1997**

**Acts Referred:**

Employees Provident Fund and Miscellaneous Provisions Act, 1952 — Section 7 A  
Penal Code, 1860 (IPC) — Section 193, 196, 228

**Citation : (1997) 3 KarLJ 312**

**Hon'ble Judges : V.P. Mohan Kumar, J**

**Bench : Single Bench**

**Advocate : K.R. Puthuraya, for the Appellant; Harikrishna S. Holla, for the Respondent**

## **Judgement**

V.P. Mohan Kumar, J.—Annexure-A order passed by the first respondent is impugned in this proceedings. The petitioner herein claims to have established and running an educational institution popularly known as Sri Narayana Guru English Medium School. The said establishment had established Nursery School in 1977 and Primary and High School thereafter. They are Sri Narayana Guru Nursery School, Sri Narayana Guru Primary and Higher Primary School. The case of the petitioner is that these are three separate, distinct entity with no functional integrality. According to them there is no inter-dependence between them. There is no inter-connection either financially or otherwise and all the appointments and other administrative affairs are done separately. It is also alleged that admission to respective schools are done independently on the basis of Transfer Certificate issued by Sri Narayana Guru Nursery School to the Primary School and to the High School as the case may be. It is therefore contended that these three institutions cannot be treated as one entity.

2. Treating these institutions as one entity, proceedings were initiated by the respondent under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, hereinafter referred to as the Act, quantifying the contribution payable

objection was field to the show cause notice. Inspection was conducted by the Enforcement Officer as well. The Enforcement Officer submitted his statement. After considering respective contentions of the petitioner, in this behalf, the impugned order Annexure-A was passed holding that these three institutions is one entity and as such it is liable to be treated as one entity. This Annexure-A order is impugned in this proceedings.

3. I have heard learned Counsel for the petitioner at length as also Mr. Harikrishna Holla, learned Counsel appearing for the Department.

4. The fundamental argument raised by the learned Counsel is that there is no functional integrality between the three institutions. She submits that closure of one school will not affect the other and it can function independently. This according to her shows that there is no functional integrality between the three institutions. She submits that requirement of production of Transfer Certificate for admission from one school to another also indicates the fact that there is no inter-dependence between these institutions. She also pointed out that there is no financial inter-dependence as well between these institutions. All these circumstances according to her will disclose that these three institutions are separate and cannot be clubbed.

5. On the contrary, Mr. Holla, learned Counsel for the respondent submits that there is connection and inter-dependence between these institutions. The requirement of Transfer Certificate for joining one institution from another is not a crucial test. He submits that these three institutions are run by one management. Therefore according to him, the stand taken by the department is correct.

6. This is a case where admittedly there are three separate institutions. Under the relevant Statute the institution cannot be established on its own. It is to be established in accordance with law. The Statute permits an institution to be established by a legal body. That legal body can have other institutions as well. In this case, apparently, Sri Narayana Guru English Medium School, Alake, Kudroli, Mangalore established at first, Sri Narayana Guru Nursery School, in the year 1977. Subsequently the very same establishment has established Sri Narayana Guru Primary and Higher Primary Schools as well. It is seen that it has brought into existence three separate institutions. The test that learned Counsel for the petitioner highlighted namely the closure of one institution will not affect the other institution has no relevance in the present circumstances. There can be several institutions where a branch or one of its department can function and its closure will not affect the main institution.

7. Learned Counsel in this behalf brought to my notice the decision of this Court in Wipro Ltd. Vs. Regional Provident Fund Commissioner, . In particular the following paragraph is relied on which reads as follows :

"To determine, whether different units of one employer constitute "one establishment" or separate establishments, various tests, such as unity of

ownership, management and control, unity of employment, functional integrity and general unity of purpose will have to be applied. But it is not possible to lay down any one test as the absolute and invariable test for all cases. It depends upon the facts and circumstances of each case. However, if by their relationship with each other the branches, units or parts constitute one integrated whole, it can be said that it is one establishment. If they do not constitute one integrated whole, it cannot be said that it is one "establishment. If they do not constitute one integrated whole it cannot be said that it is "one establishment. If they do not constitute one integrated whole, each unit is separate. If one unit can exist conveniently and reasonably without the other, they are not one but separate units. The test of integrality or commonness is the basis to hold that several units of one employer is one establishment."

On facts this principle has no application.

8. The three institutions have been established by one entity and they are functioning under the same management. Merely because, it may continue to exist even without the existence of other institution, it does not follow that there is absence of functional integrality. All the institutions exist under one employer. That submission of the learned Counsel for the petitioner has to be rejected. The first respondent has correctly exercised its discretion in assessing the contribution. Annexure-A does not call for interference, on this ground.

9. Another submission made by the learned Counsel is that no notice was issued to Billawara Union, who according to her is the employer notifying the proceedings. I do not think this submission is also correct. Since the petitioner institution is under the control of the legal entity recognised by the statute, the correspondent, notice sent] to the correspondent is sufficient compliance of requirement of law.

10. All the same, there is a crucial defect in the submission made by the respondent in this matter. It is seen from the impugned order the proceedings were initiated for assessment for the period namely June 30, 1987 to May 31, 1988. When the quantification is made, it is seen that it relates to the period from June 30, 1987 to May 31, 1988 and no details have been given detailing as to how this amount is quantified. As held by the Supreme Court in FCI vs Suraj Bhan, 1995 (4) SCC 446 , the enquiry has to be conducted by the officer u/s 7A of the Act, in accordance with law and as he has powers of the Civil Court as well, he has to ascertain the quantum as if adjudicating the question in a Civil Court. The officer should afford an opportunity to the parties to show-cause regarding the assessment. The following paragraph in this behalf may be relevant :

"8. It is of importance to remember that the Commissioner while conducting an inquiry u/s 7A has the same powers as are vested in the Court under the CPC for trying a suit. The Section reads as follows :

"7-A Determination of money due from employer - (1) The Central Provident

Fund Commissioner, any Deputy Provident Funds Commissioner or any Regional Provident Fund Commissioner may by order determine the amount due from any employer under any provision of this Act (the scheme or the Family Pension Scheme or the Insurance Scheme as the case may be) and for this purpose may conduct such inquiry as he may deem necessary.

(2) The officer conducting the inquiry under sub-section (1) shall, for the purposes of such inquiry, have the same powers as are vested in a Court under the Code of Civil Procedure, 1908, for trying a suit in respect of the following matters, namely,

(a) enforcing the attendance of any person or examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavit;

(d) issuing commissions for the examination of witnesses and any such inquiry shall be deemed to be a judicial proceeding within the meaning of Section 193 and 228, and for the purpose of Section 196 of the Indian Penal Code."

9. It will be seen from the above provisions that the Commissioner is authorised to enforce attendance in person and also to examine any person on oath. He has the power requiring the discovery and production of documents. This power was given to the Commissioner to decide not abstract questions of law, but only to determine actual concrete differences in payment of contribution and other dues by identifying the workmen. The Commissioner should exercise all his powers to collect all evidence and collate all materials before coming to proper conclusion. That is the legal duty of the Commissioner. It would be failure to exercise the jurisdiction particularly when a party to the proceedings requests for summoning evidence from a particular person."

11. Mr. Harikrishana Holla, learned Counsel for the respondent submitted that quantification was made for three years and not for one year. If so it is only proper that details should be furnished as to how the amount has been quantified. I therefore quash Annexure-A order to the extent of quantification made by the first respondent. The first respondent shall disclose the petitioner the basis on which the authority intends to quantify the amount payable by the petitioner. The petitioner is entitled to file their objections and a final order shall be made by the respondent after hearing the petitioner with respect to the quantification. To this extent Annexure-A shall stand quashed. In all other aspects, Annexure-A stands confirmed. Writ petition disposed of.