IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

THURSDAY, THE 15TH DAY OF OCTOBER 2015/23RD ASWINA, 1937

WP(C).No. 9455 of 2005 (A)

PETITIONER:

M/S.SREEVARAHAM VANITHA SAMITHI
SOUTH FORT, THIRUVANANTHAPURAM-23
REP. BY ITS PRESIDENT.

BY ADVS.SRI.U.K.RAMAKRISHNAN (SR.)
SRI.P.V.LOHITHAKSHAN
SMT.P.VIJAYAMMA
SRI.V.KRISHNA MENON
SRI.U.K.DEVIDAS
SRI.SANDEEP.E.

RESPONDENTS:

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1. EMPLOYEES PROVIDENT FUND APPELLATE TRIBUNAL,
60, SKYLARK BUILDING
7TH FLOOR, NEHRU PLACE, NEW DELHI.

2. THE ASST. PROVIDENT FUND COMMISSIONER (ENF),
EMPLOYEES PROVIDENT FUND ORGANIZATION
REGIONAL OFFICE, BHAVISYANIDHI BHAVAN, PATTAM
THIRUVANANTHAPURAM.

3. THE PRESIDENT,
M/S.SREEVARAHAM VANITHA SAMITHI WORKER'S
ASSOCIATION, VANCHIYOOR, THIRUVANANTHAPURAM.

R1 & R2 BY ADV. SRI.N.N. SUGUNAPALAN, SC, P.F.
ADV. SRI.S.SUJIN
R3 BY ADV. SRI.GOPAKUMAR R.THALIYAL
R3 BY ADV. SRI.N.P.PRAJEESH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 15-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN W.P.(C)No.9455/2005

PETITIONER'S EXTS:

EXT.P1: COPY OF REGISTRATION CERTIFICATE OF THE TRUST.

EXT.P2: COPY OF NOTICE DT.14.2.94 ISSUED BY THE REGIONAL PROVIDENT FUND COMMISSIONER, KERALA.

EXT.P3: COPY OF ORDER OF THE 2ND RESPONDENT PASSED ON 31.7.2000.

EXT.P4: COPY OF APPEAL MEMORANDUM WITHOUT ANNEXURES.

EXT.P5: COPY OF EDUCATIONAL POLICY OF THE GOVT.OF INDIA.

EXT.P5(A): COPY OF EDUCATIONAL POLICY OF THE GOVT.OF INDIA.

EXT.P6: COPY OF AWARD OF THE INDUSTRIAL TRIBUNAL, KOLLAM IN I.D.No.4/95 DT.4.2.98.

EXT.P7: COPY OF ORDER DT.19.1.2005 PASSED BY THE 1ST RESPONDENT.

EXT.P8: COPY OF REGISTRATION CERTIFICATE OF THE PETITIONER.

EXT.P9: COPY OF NOTIFICATION DT.8.9.89.

EXT.P10: COPY OF NOTIFICATION DT.30.9.98.

EXT.P11: COPY OF CERTIFICATE DT.26.11.91 ISSUED BY THE CHARTERED ACCOUNT FOR THE YEAR 1990-91.

EXT.P12: COPY OF CERTIFICATE DT.26.11.91 ISSUED BY THE CHARTERED ACCOUNT FOR THE YEAR 1990-91.

EXT.P13: COPY OF CERTIFICATE DT.26.11.91 ISSUED BY THE CHARTERED ACCOUNTANT FOR THE YEAR 1990-91.

EXT.P14: COPY OF CERTIFICATE DT.13.3.93 ISSUED BY THE CHARTERED ACCOUNTANT FOR THE YEAR 1991-92.

EXT.P15: COPY OF CERTIFICATE DT.13.3.93 ISSUED BY THE CHARTERED ACCOUNTANT FOR THE YEAR 1991-92.

EXT.P16: COPY OF CERTIFICATE DT.30.6.93 ISSUED BY THE CHARTERED ACCOUNTANT FOR THE YEAR 1992-93.

EXT.P14: COPY OF CERTIFICATE DT.30.6.93 ISSUED BY THE CHARTERED ACCOUNTANT FOR THE YEAR 1992-93.

EXT.P15: COPY OF CERTIFICATE DT.30.6.93 ISSUED BY THE CHARTERED ACCOUNTANT FOR THE YEAR 1992-93.

RESPONDENTS' EXTS:

EXT.R2(A): COPY OF ENQUIRY REPORT ISSUED BY THE 2ND RESPONDENT DT.18.11.93.

EXT.R2(B): COPY OF NOTE FROM THE PETITIONER ISSUED BY THE 2ND RESPONDENT.

EXT.R2(C): COPY OF ATTENDANCE REGISTER OF THE PETITIONER SAMITHY

EXT.R2(D): COPY OF WAGES REGISTER ISSUED BY THE PETITIONER TO THE 2ND RESPONDENT DT.21.8.93.

TRUE COPY

P.S.TO JUDGE

dsn

ANIL K. NARENDRAN, J.

W.P.(C) No.9455 of 2005

Dated this the 15th day of October, 2015

JUDGMENT

The petitioner, which is a Society registered under the Travancore-Cochin Literary, Scientific and Charitable Societies Act, 1957 namely, 'Sreevaraham Vanitha Samithi' has approached this Court in this writ petition seeking a writ of certiorari to quash Ext.P3 order dated 31.07.2000 of the 2nd respondent and Ext.P7 order dated 19.01.2005 of the 1st respondent, and seeking a declaration that the petitioner is not liable to be covered under the provisions of the Employees Provident Funds and Miscellaneous Provisions Act, 1952.

2. Going by the averments in the writ petition, the main objects of the Society are as follows;

a) to promote the economic cultural and social welfare of the poor and deserving classes,

b) to supply free medical aid to all deserving women and children of the locality as also educational facilities to children and giving training in home industry such as handicrafts etc.,

c) to start nursery classes with Malayalam and English medium and if possible basic and primary classes also.

3. The petitioner Society (hereinafter referred to as 'the Samithi') conducted Baby Creche, Malayalam Medium Nursery, Library, Craft Training Centre and Children's Park. In the year 1982, the Executive Committee of the Samithi decided to register a separate organisation known as 'Ponnamma Thanupilla Trust' (hereinafter referred to as 'the Trust'). The Trust was registered vide Ext.P1 certificate of registration and it was conducting an English Medium Nursery and also a Pre-primary School. In the year 1994, the Trust discontinued the said nursery as well as the pre-primary school. The Samithi has also stopped the Baby Creche and Nursery in the year 1995. According to the petitioner, the total number of employees in the Samithi had never exceeded 14 and that in the Trust never exceeded 7.

4. The Regional Provident Fund Commissioner, Kerala issued Ext.P2 notice dated 14.02.1994 demanding coverage of the Samithi under the provisions of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as 'the EPF Act'), with effect from 31.08.1982. It was

mentioned in Ext.P2 that, the coverage is demanded under Notification No.S.O.986 dated 19.02.1982, which deals with 'any other institution in which the activity of imparting knowledge of training is systematically carried on'. The Samithi objected the said demand of the Provident Fund Commissioner, contending that, it is not engaged in any activity of imparting knowledge or training systematically. Further, the Trust is an independent establishment and both establishments cannot be clubbed together for the purpose of coverage under the EPF Act. Rejecting the objections raised by the Samithi, the 2nd respondent issued Ext.P3 order dated 31.07.2000, under Section 7A of the EPF Act, confirming coverage of the two establishments, with effect from 31.08.1982. Against Ext.P3 order, the Samithi filed Ext.P4 appeal before the Employees Provident Fund Appellate Tribunal, the 1st respondent herein, under Section 7A of the EPF Act.

5. Relying on Ext.P5 National Policy on Education-1986, Ext.P5(a) Guidelines for pre-primary schools and Ext.P5(b) letter on 'early childhood care and education', the Samithi would contend that it is not engaged in any activity of imparting knowledge or training and that, running of a Baby Creche cannot

be treated as an activity of imparting knowledge or training. Further, in the Nursery School, only children below 5 years are admitted and they are also not given any education or knowledge and the children are carefully looked after, and in the course of nursing them the nursery teachers sing songs and play with them. The question of imparting knowledge to children below 5 years does not arise as it is not permitted under law, which is evident from Exts.P5, P5(a) and P5(b). The Samithi has also contend that, since 1994, the total number of employees engaged in the conduct of nursery was only 4 and the number of employees engaged in the Baby Creche and Library was only 10. Therefore, the Samithi cannot be brought under the purview of the EPF Act.

6. It was contended further that, the Samithi and the Trust are two different, independent and distinct legal entities. They are not depended on each other. The Samithi and the Trust have separate management, separate set of employees, separate registrations, separate accounts and their activities are also separate and independent. There is no interdependency or functional integrality. When the Trust was founded in the year

1982, all the properties of the Samithi including bank balance were handed over to the Trust and this was done pursuant to a resolution of the General Body of the Samithi held on 03.04.1982. Subsequent to 03.04.1982, whatever properties acquired by the Trust and the money received by the Trust and the Samithi are treated as separate properties, which is evident from the statement of accounts and balance sheets maintained by the Samithi and the Trust. Relying on the balance sheets and statement of accounts, it was contended that, the Samithi and the Trust have independent income and expenditure and they have separate source of income. The income of the Samithi consists of donations, membership fees and the grant given by the Central Social Welfare Board and other bodies and the income of the Trust is independent from those sources. Relying on Ext.P6 award passed by the Industrial Tribunal, Kollam, in I.D.No.4 of 1995 dated 04.02.1998 it was contend that, the Samithi and the Trust cannot be treated as a single unit and both are not interdependent. The Tribunal by Ext.P7 order dismissed Ext.P4 appeal filed by the Samithi. It is aggrieved by Ext.P3 and P7 orders, the petitioner Samithi is before this Court in this writ petition, seeking various reliefs.

7. A counter affidavit has been filed on behalf of the 2nd respondent contending that the reasoning of the said respondent in Ext.P3 order and that of the Tribunal in Ext.P7 order are perfectly legal and no interference of this Court under Article 226 of the Constitution of India is warranted. The 2nd respondent has also stated that, as evident from Ext.R2(a) enquiry report dated 18.11.1993, Ext.R2(b) note issued to the petitioner, Ext.R2(c) attendance register and Ext.R2(d) wage register, the Samithi can be independently covered under the provisions of the EPF Act, with effect from 31.08.1982, as it was having more than 20 employees during August 1982. In that view of the matter, the reasoning in the impugned orders as to the applicability of EPF Act to the Samithi is perfectly legal.

8. A counter affidavit has been filed by the 3rd respondent, namely, the President of Sreevaraham Vanitha Samithi Workers Association, supporting the reasoning of the 2nd respondent in Ext.P3 order and that of the Tribunal in Ext.P7.

9. I heard arguments of the learned Senior Counsel for the petitioner Samithi, the learned Standing Counsel for

respondents 1 and 2 and also the learned counsel for the 3rd respondent Workers Association.

10. The sole issue that arises for consideration in this writ petition is as to the legality or otherwise of Ext.P3 order passed by the 2nd respondent, which was confirmed in Ext.P7 order passed by the Tribunal, holding that, the petitioner Samithi is liable to be covered under the provisions of the EPF Act.

11. It is vide Ext.P2 notice dated 14.02.1994, the Regional Provident Fund Commissioner, Kerala came to a conclusion that the provisions under the EPF Act and the Scheme made thereunder are applicable to the establishment run by the Samithi, with effect from 31.08.1982. The aforesaid notice was issued on the ground that, the establishment run by the Samithi falls under the category of 'any other institution in which activity of imparting knowledge or training is systematically carried on', covered by Notification No.S.O.986 dated 19.02.1982. The 2nd respondent has also found that, the establishment has employed 20 or more persons, with effect from 31.08.1982, and as such it is liable to be covered under the provisions of the EPF Act. Though the Samithi would contend that at no point of time it had

employed more than 20 employees, Ext.R2(a) enquiry report submitted by the 2nd respondent, based on an inspection conducted in the establishments on 08.10.1993, would show that in April 1982, the number of employees engaged by the Samithi was 20. As per the said report the number of employees engaged for April, May, June, July, August and September, 1982 were 20, 29, 18, 20, 21 and 21 respectively. In the year 1983, the number of employees employed in the months of July, August and September were 23, 20 and 20 respectively. In Ext.R2(a) report, the 2nd respondent has also recommended that, the establishment may be covered with effect from 01.08.1982. Further, the Samithi may also be requested to extent the benefit under the EPF Act to the employees of the Trust, with effect from 10/1982.

12. Ext.R2(b) is a note prepared by the Enforcement Officer, which has been referred to in Ext.R2(a) enquiry report. A reading of Ext.R2(b) would show that, on verification of the records of the Samithi, the Enforcement Officer found that, the activities of the Samithi include conducting baby creches, nursery classes, craft training for girls and women, library for women and

children, theater for children, dance and music classes, day care and extension services for elderly women, research and training section and pre-primary teachers training. Therefore, it was found that the main activity of the Samithi in earlier days and at the time of verification are in educational field and hence it is an institution in which activity of imparting knowledge or training is systematically carried on, falling under the purview of Notification No.S.O.986 dated 19.08.1982. On verification of the attendance and wage register, the Enforcement Officer found that the employment strength of the establishment exceeded 19 during the month of August 1982, the date on which the provisions of the EPF Act was made applicable to educational institutions. The list of employees employed during the month of August 1992 and September 1992 obtained from the Secretary of the Samithi was also enclosed alongwith Ext.R2(b) note, as per which the total number of employees was 21. It was in such circumstances, it was recommended in Ext.R2(b) note that, the provisions under the EPF Act is applicable to the establishment in question, with effect from 01.08.1982.

13. The Enforcement Officer in Ext.R2(b) noticed that, as

authorised by the General Body of the Samithi, in its meeting held on 03.04.1982, 10 representatives of the Samithi registered 'Ponnamma Thanu Pillai Charitable Trust'. Smt. Ponnamma Thanu Pillai is the founder President of the Samithi and she was also the President of the Samithi at the time of registration of the Trust. As per the Articles of Association of the Trust, one of the object of forming of such Trust is to supervise, guide and assist to the extent possible, educational, social and cultural activities of the Samithi and such other organisations, providing free medical aid to all deserving women and children. The other objects of the Trust include, providing educational facility to children and training in home industries and handicraft to women. As per the Articles, the office of the Trust shall be located in 'Sreevaraham Vanitha Samithi Buildings'. Further, as decided by the General Body of the Samithi at the meeting held on 03.04.1982 all existing properties, both movable and immovable, the bank balance and also the fixed investments held in the name of the Samithi vested in the Board of Trustees of the Trust. In addition to this, going by the Articles of Association of the Trust, the Chairman of the Board of Trustees will be a nominee of

Smt.Ponnamma Thanu Pillai, the President of the Samithi or she herself can hold the office of the Chairman as long as she wishes. She can also nominate four life members in the Trust. The Board of Trustees will also consists of three representatives elected by the General Body of the Samithi from among its effective members.

14. The Enforcement Officer in Ext.R2(b) has also noticed that, the Trust is conducting an English Medium School in the same building in which the institutions of the Samithi are also functioning. Though the English Medium School was started only in June 1986, the office of the Trust was functioning there from December 1982 onwards, with certain staff and the employees of the Trust. As on the date of inspection the staff strength of the English Medium School, including one part-time sweeper, was 14, and the employment strength of the Trust never reached 20 till the date of inspection. Though, the Samithi and the Trust are registered in different dates and are having separate office bearers, different by-laws, separate accounts, it was noticed in Ext.R2(b) that, the Samithi and the Trust are interconnected due to various aspects, namely, the Trust was promoted by the

members of the Samithi as per the decision of the General Body meeting; various institutions under both the organisations are functioning in the same compound; the President of the Samithi and the Chairman of the Trust is one and the same person; out of the 8 members including the Chairman of the Board of the Trust are the members elected by the General Body of the Samithi and other three members are life members nominated by the Founder President of the Samithi and another member is the representatives of her family; the properties, both movable and immovable, the bank balance and also the fixed investments held in the name of the Samithi vested in the Board of Trustees of the Trust on its formation; the income of the Samithi is not sufficient to meet the entire expenditure, as such funds available in the Trust were transferred to the Samithi for meeting such contingencies, as reflected in the balance sheets and income and expenditure statements for three years in respect of both the organisations; and one common office is maintained for both Samithi and Trust. Further, the President of the Samithi has also admitted that, deputation of teachers from Nursery wing and English Medium School are frequent without any written order; if any teacher is absent in the Nursery School under the Samithi teachers available in English Medium School under the Trust will be deputed to the Nursery School for taking class and vice versa. Therefore, the materials on record make it explicitly clear that there is interdependency and functional integrality between the Samithi and the Trust. In such circumstances, it was concluded that, the employees of the Trust are also eligible for the benefit under the EPF Act, with effect from the date of establishment, along with the employees of the Samithi.

15. Relying on Ext.P6 award passed by the Industrial Tribunal, Kollam, in I.D.No.4 of 1995, the learned Senior Counsel for the petitioner would contend that, there is absolutely no interdependency between the Samithi and the Trust and it is so held in the aforesaid award passed by the Industrial Tribunal. Ext.P6 award relied by the learned Senior Counsel is in respect of wage revision and other consequential claims made by the workmen of the Samithi, which was referred for adjudication by Government order dated 21.3.1995. A reading of para.12 of Ext.P6 award would show that, before the Tribunal, the Union had taken a contention that, the Management, namely, the

Samithi is getting huge amount from Priyadarshini Auditorium by way of rent. Then the Samithi contended that, it is not managing the aforesaid auditorium. Before the Industrial Tribunal, it has come out in evidence that, the auditorium has been transferred to the Trust in October 1982 and the income from the hall goes to the Trust. The Samithi has also raised a contention that, the management of the Trust and Samithi are different entities and that the Union has no contention that both are one and the same. It was in that context, the Industrial Tribunal in Para.12 of the award observed as follows;

> "**12.** The union has a contention that the management is getting huge income from Priyadersini hall by way of rent. It is stated in the written statement of the management itself that the Samithi is not managing Priyadersini Auditorium. It has come out in evidence that the auditorium has been transferred to Ponnamma Thanupillai Trust ('the trust' for short) as early in October 1982 and the income from the hall goes to the Trust. Ext.M14 to M16 application show that application for getting the hall was filed to the trust and not to the Samithi. Exts.M17 to M19 chalans show payment of money to the Corporation for licence by the trust. Exts.W5 and W6 receipts produced by the union itself show that Ponnamma Thanupillai Trust has received rent on 5.7.1990 and WW3 has deposed that these receipts are for letting out the auditorium. That also support the case of management

that the income from Priyadersini Auditorium goes to the Trust and not to the Samithi. It is evident from the balance sheet that the Samithi has been taking loan from the Trust. According to the management the Trust and Samithi are different entities and the union has no contention that both are one and the same and the Priyadershini hall is part of the Samithi. Since no such contention has been raised in the claim statement, that cannot be considered as such a contention was raised only during the evidence stage without any pleadings. This argument is supported by a decision of the Supreme Court in Shankar Chakravarthi v. Britannia Biscuit Company and another (1979 (2) LJJ 149). At page 207 of the judgment the court has pointed out that a contention to substantiate which evidence is necessary has to be pleaded. If there is no pleading raising a contention there is no question of substantiating such a non existing contention by evidence. It is also held that it is well settled that allegation which is not pleaded, even if there is evidence in support of it cannot be examined because the other side has no notice of it and if entertained it would tantamount to granting an unfair advantage to the first mentioned party. In the case before the Tribunal since the union has not raised any such contention the management is not bound to produce any documents to show that the Samithi and Trust are different entities. However, it has come out in evidence that the Trust is different and distinct from the Samithi. Ext.M12 is the registration certificate of the Trust and Ext.M13 is the Byelaw. It is also not disputed that the Samithi is having separate balance sheet and accounts.

> Merely because some of the objective of the Samithi and that of the Trust are same or simply because the both are registered under the same enactment or because they are functioning in the same premises will not make it a single establishment. There is no evidence of any inter dependability or financial integrality or interchangeability of employees between the Samithi and the Trust. It is also noticeable that the union has not proved the income of the Trust to show the financial capacity of the Trust or the Samithi. The management was not called upon to produce any document in this regard. The argument of the learned counsel for the union is that according to the union there is Samithi only and the union is not aware of the Trust or the transfer of the Priyadersini Auditorium or the assets of the Samithi to the Trust. So according to the learned counsel it is not obligatory on the part of the union to establish that the trust and Samithi are one and the same. But Exts.W5 receipt produced and proved by the union makes it clear that the union is fully aware of the existence of Trust and the statement of WW3 show that the Trust is getting income from Priyadersini Auditorium. In the light of the above, the argument of the learned counsel for the union stated above is only to be rejected."

16. In Ext.P6 award, the Industrial Tribunal concluded that, merely because some of the objectives of the Samithi and that of the Trust are same or simply because the both are registered under the same enactment or because they are

functioning in the same premises, will not make it a single establishment. However, a reading of Ext.P6 award would show that, the Tribunal arrived as such a conclusion, since the Union could not place before it any evidence of interdependency or functional integrality or interchangeability of employees between the Samithi and the Trust. Therefore, merely relying on the findings in Ext.P6 award, it cannot be contended that there is no interdependency between the Samithi and the Trust, especially when the conclusions made in Exts.P3 order of the 2nd respondent and P7 order of the Tribunal are based on reliable materials. Further, as rightly pointed out by the learned counsel for the 3rd respondent Workers Association, when it was brought to the notice of the Industrial Tribunal that, the question as to whether the provisions of the EPF Act can be made applicable to the employees of the Samithi is pending consideration before the EPF authorities, that issue was left open in Ext.P6 award. The decision of the Tribunal in Demand No.5 reads thus;

> "Demand No.5. Grant of pension:- The only statement regarding this demand in the claim statement is that pension scheme may be introduced to the employees of the Samithi. No details or reasons are given in support of

> this claim. According to the management the employees of the Samithi are linked with specific project and no pension is payable in the project. However, during the course of the evidence it was pointed out that the question as to whether Employees Provident Fund Act is applicable to the employees of the Samithi is pending decision of the Employees Provident Fund Authorities and if the EPF is held to be applicable to the Samithi as a final decision the employees will get pension under the EPF claim. Therefore, this demand is kept open awaiting the decision of the EPF authorities."

17. Relying on the judgment of the Calcutta High Court in **Regional Provident Fund Commissioner v. Cementation Co. Ltd. [1974 Lab IC 827]**, the learned Senior Counsel for the petitioner Samithi would contend that, in order to determine whether the provisions of the EPF Act applies to a particular industry it must first has to be determined whether the activity carried on by the establishment is the principal or incidental activity and if principal, whether such activity is within the purview of the Act. In the case on hand, during the course of enquiry by the 2nd respondent, the main thrust of the argument raised by the Samithi was that it will not fall under the category of educational institution imparting knowledge. In support of the

said contention, the Samithi relied on Ext.P5 National Policy on Education-1986, Ext.P5(a) Guidelines for pre-primary schools and Ext.P5(b) letter on 'early childhood care and education'. However, during the course of enquiry, it has come out that, the activity of the Samithi includes conducting baby creches, nursery classes, craft training for girls and women, library for women and children, theater for children, dance and music classes, day care and extension services for elderly women, research and training section and pre-primary teachers training. Ext.R2(b) is a note prepared by the Enforcement Officer, which has also been referred to in Ext.R2(a) enquiry report. Therefore, it was based on reliable materials collected during the said enquiry, the 3nd respondent in Ext.P3 order concluded that, the main activity of the Samithi in earlier days and at the time of verification are in educational field and hence it is an institution in which activity of imparting knowledge or training is systematically carried on, falling under the purview of Notification No.S.O.986 dated 19.08.1982. A reading of Ext.P7 order passed by the Tribunal would indicate that, the aforesaid conclusion of the 2nd respondent in Ext.P3 order was not seriously challenged before the Tribunal. At any rate, the reasoning of the authorities under the EPF Act in support of the aforesaid conclusion cannot be termed either perverse or patently illegal, warranting an interference of this Court under Article 226 of the Constitution of India.

18. Relying on the judgment of the High Court of Karnataka in **Devesh Sandeep Associates and others v. Regional Provident Fund Commissioner [1997 (I) LLJ 141 (Kar)]** the learned Senior Counsel appearing for the Petitioner Samithi would contend that, mere common ownership of the two units and the mere location of the two units in the common premises by itself is not sufficient to satisfy the test of functional integrality. Nor would a mere common object of the two units to carry on certain business or their working for each other answer the test. Relying on the judgment of the Apex Court in **Regional Provident Fund Commissioner and another v. Dharamsi Morarji Chemicals Co. Ltd. [1998 (I) LLJ 1060 (SC)]** the learned counsel would contend that, common ownership by itself is not enough unless evidence shows interconnection between the units so as to allow inference of common supervisory, financial

and managerial control. Relying on the judgment of the Bombay High Court in **Nandinee Travels Pvt. Ltd. v. Regional Provident Fund Commissioner, Goa [2003 (II) LLJ 810]** the learned counsel would contend that, the test of functional integrality of different units is not mere geographical proximity or financial dependancy; but the test is whether one unit will survive in the absence of other.

19. Per contra, the learned counsel for the 3rd respondent would rely on the judgment in **Noor Niwas Nursery Public School v. Regional Provident Fund Commissioner and others [2001 (1) SCC 1]**, in which the Apex Court held that, whether two units are one or distinct will have to be considered in the light of the provisions of Section 2A of the EPF Act which declares that where an establishment consists of different departments or has branches whether situate in the same place or in different places, all such departments or branches shall be treated as parts of the same establishment. In such cases, the Court has to consider how far there is functional integrity between the two units, whether one unit cannot exist conveniently and reasonably without the other, and on the

further question, in matters of finance and employment, the employer has actually kept the two units distinct or integrated.

20. In **Sayaji Mills Ltd. v. Regional Provident Fund Commissioner [1984 Supp SCC 610]** the Apex Court explained as to what should be the approach of the Court towards a legislation like EPF Act. The Apex Court held that, the EPF Act has been brought into force in order to provide for the institution of provident funds for the benefit of the employees in factories and establishments. Article 43 of the Constitution of India requires the State to endeavour to secure by suitable legislation or economic organisation or in any other way to all workers, agricultural, industrial or otherwise among others conditions of work ensuring a decent standard of life and full enjoyment of leisure. The provision of the Provident Fund Scheme is intended to encourage the habit of thrift amongst the employees and to make available to them either at the time of their retirement or earlier, if necessary, substantial amounts for their use from out of the provident fund amount standing to their credit which is made up of the contributions made by the employers as well as the employees concerned. Therefore, the

Act should be construed so as to advance the object with which it is passed. Any construction which would facilitate evasion of the provisions of the Act should as far as possible be avoided. The Apex Court reiterated said principle in **Gadodia and Sons and another L.N. v. Regional Provident Fund Commissioner [2011 (13) SCC 517]**.

21. In the case on hand, the conclusions made in Ext.P3 order of the 2nd respondent, which was confirmed in Ext.P7 order of the Tribunal, is not merely on the ground of common ownership or location of the establishments under the Samithi and the Trust. On the other hand, during the course of enquiry by the 2nd respondent, it has come out that, though the Samithi and the Trust are registered in different dates and are having separate office bearers, different by-laws, separate accounts, the Samithi and the Trust are interdependent due to various aspects, namely, the Trust was promoted by the members of the Samithi; various institutions under both the organisations are functioning in the same compound; the President of the Samithi and the Chairman of the Trust is one and the same person; out of the 8 members including the Chairman of the Trust are the members

elected by the General Body of the Samithi and other 3 members are life members nominated by the Founder President of the Samithi and another member is the representatives of her family. It has also come out in the enquiry that, the properties, both movable and immovable, the bank balance and also the fixed investments held in the name of the Samithi vested in the Board of Trustees of the Trust on its formation; the income of the Samithi is not sufficient to meet the entire expenditure, as such funds available in the Trust were transferred to the Samithi for meeting such contingencies, as reflected in the balance sheets and the income and expenditure statements for three years in respect of both the organisations; and one common office is maintained for both Samithi and Trust. During the course of enquiry, the President of the Samithi has also admitted that, deputation of teachers from Nursery wing and English Medium School are frequent without any written order; if any teacher is absent in the Nursery School under the Samithi teachers available in English Medium School under the Trust will be deputed to the Nursery School for taking class and vice versa. Therefore, the materials on record established interdependency and functional intergrality between the Samithi and the Trust, sufficient to draw an inference of common supervisory, financial and managerial control.

22. As I have already noticed, on formation of the Trust, the entire properties, both movable and immovable, the bank balance and also the fixed investments held in the name of the Samithi vested in the Trust. The properties so vested in the Trust includes the Government land originally assigned in favour of the Samihti, in which the Samithi had made certain constructions including an auditorium, namely, Priyadarshini Auditorium. The legality or otherwise of the transfer so made on the formation of the Trust is not a subject matter of this writ petition. However, it is a fact that, the formation of the Trust resulted in the transfer of the entire assets of the Samithi in favour of a Trust in which Smt.Ponnamma Thanu Pillai, the Founder President of the Samithi is having absolute control, in nominating the Chairman and members to its Board of Trustees. Now, as borne out from records, the Trust is collecting income from Priyadarshini Auditorium and the Trust is also giving financial support to the Samithi. Therefore, the materials already on record are sufficient

to draw an inference that, the Samithi will not survive in the absence of the Trust. In that view of the matter, the reasoning of the 2nd respondent in Ext.P3 order and that of the Tribunal in Ext.P7 order cannot be termed either perverse or patently illegal, warranting an interference of this Court under Article 226 of the Constitution of India.

23. A reading of Ext.P3 order of the 2nd respondent would show that, during the course of enquiry, it has come out that the Samithi has employed 20 or more persons, with effect from 31.08.1982, and as such it is liable to be covered under the provisions of the EPF Act. Ext.R2(a) enquiry report submitted by the 2nd respondent, based on an inspection conducted in the establishment on 08.10.1993, would show that in April 1982, the number of employees engaged by the Samithi was 20. As per the said report the number of employees engaged for April, May, June, July, August and September, 1982 were 20, 29, 18, 20, 21 and 21 respectively. In the year 1983, the number of employees employed in the months of July, August and September were 23, 20 and 20 respectively. The findings in the said report is also based on Ext.R2(c) attendance register and Ext.R2(d) wage

register. If that be so, the Samithi can be independently covered under the provisions of the EPF Act, with effect from 31.08.1982, as it was having more than 20 employees during August 1982.

24. In such circumstances, I find absolutely no illegality or irregularity in Exts.P3 order passed by the 2nd respondent and P7 order passed by the Tribunal. The reasoning of the said authorities in Exts.P3 and P7 orders are neither perverse nor patently illegal warranting an interference of this Court under Article 226 of the Constitution of India.

In the result, the Writ Petition fails and the same is dismissed. No order as to costs.

Sd/-
ANIL K.NARENDRAN, JUDGE

JV/dsn

True copy

P.S.to Judge