

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

FRIDAY, THE 6TH DAY OF FEBRUARY 2015/17TH MAGHA, 1936

WP(C).No. 31199 of 2010 (Y)

PETITIONER:

**M/S.THE TRIVANDRUM SCOTTISH SCHOOL
THUNDATHIL, KARIAVATTOM, THIRUVANANTHAPURAM
REP., BY ITS SECRETARY, SMT. LALITHAMBA.**

**BY ADVS.SRI.T.L.SREERAM
SRI.BLAZE K.JOSE
SRI.T.T.RAKESH**

RESPONDENTS:

- 1. ASSISTANT PROVIDENT FUND COMMISSIONER,
EPFO, BHAVISHIYA NIDHI BHAVAN, PATTOM
THIRUVANANTHAPURAM.**
- 2. THE RECOVERY OFFICER,
PROVIDENT FUNDS, BHAVISHIYA NIDHI BHAVAN, PB NO.1016
PATTOM PALACE PO, THIRUVANANTHAPURAM.**

BY ADV. SMT.T.N.GIRIJA, SC,EPF ORGANISATION

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06-02-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

JV

APPENDIX

PETITIONER'S EXHIBITS:

- P1 : COPY OF THE COVERAGE LETTER ISSUED FROM THE EPF ORGANISATION SUB REGIONAL OFFICE VASHI, MUMBAI
- P2 : COPY OF the FORM 3A CHELAN
- P3 : COPY OF THE FORM 6A CHELAN
- P4 : COPY OF A COMBINED CHELAN RECEIPT
- P5 : COPY OF THE ORDER DATED 21.04.2010 OF THE 1ST RESPONDENT AS UNDER SECTION 7A OF THE EPF ACT
- P6 : COPY OF THE REVIEW PETITION FILED UNDER SECTION 7B OF the EPF AND MP ACT BEFORE THE 1ST RESPONDENT
- P7 : COPY OF THE ORDER NO.K.R.22578/ENFI(1)2010 DATED 17.08.2010 OF THE 1ST RESPONDENT AS UNDER SECTION 7B OF THE EPF ACT

RESPONDENTS' EXHIBITS:

- R1(A) : COPY OF THE COVERAGE NOTICE DATED 14.09.2007
- R1(B) : COPY OF THE 7A ORDER DATED 21.04.2010
- R1(C) : COPY OF THE ORDER PASSED IN SECTION 7B REVIEW APPLICATION
- R1(D) : SALARY RECORD DETAIL FO THE ESTABLISHMENT
- R1(E) : COPYOF THE MINUTES OF STAFF MEETING HELD ON 28.06.2006
- R1(F) : COPY OF THE REPORT OF THE SQUARD OF ENFORCEMENT OFFICERS DATED 08.02.2010
- R1(G) : COPY OF LETTER ISSUED TO REGIONAL COMMISSIONER, VASHI

//TRUE COPY//

P.A. TO JUDGE

JV

K. VINOD CHANDRAN, J.

W.P.(C) No.31199 of 2010

Dated this the 6th day of February, 2015

JUDGMENT

The petitioner, an educational establishment which admittedly started functioning in the academic year 2003-04 challenges the coverage under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (EPF & MP Act), the proceedings in which are initiated by the respondents in 2007.

2. The essential contention raised by the petitioner is that, the petitioner has been registered under the Organization at its sub Regional Office, Mumbai, the document of which is exhibited at Ext.P1. The petitioner contends that they have been regularly remitting the contributions to all its employees in the Organization itself at Mumbai and hence, Ext.P5 order passed under Section 7A of the EPF & MP Act is not sustainable. The petitioner has also filed an application under Section 7B of the EPF & MP Act, contending that, the registration obtained from Mumbai could not be produced at the time of hearing and hence,

the order may be reviewed. The original order under Section 7A is produced at Ext.P5 and the application for review under Section 7B is produced at Ext.P7.

3. Respondents have filed a counter affidavit wherein it is pointed out that Section 7B proceedings would not lie since it could not be said that the material produced for the purpose of review was not available to the petitioner despite exercise of due diligence. It is also contended that the registration obtained at Mumbai under the respondent/Organization itself was subsequent to the notice issued and to escape from the proceedings under Section 7A initiated by the respondents as per Ext.R1(A). The learned Standing Counsel appearing for the respondent/Organization would also rely on Section 2A of the EPF & MP Act to contend that there is no establishment as such in Mumbai which could have given a jurisdictional cause of action for obtaining a registration in Mumbai. The attempt of the petitioner is said to be one aimed at avoiding the retrospective coverage threatened as per Ext.R1(A) and for avoiding regular inspections which, the EPF & MP Act confers power on the jurisdictional office of the respondent-Organization, at

Thiruvananthapuram.

4. After hearing the matter on 29.01.2015, the matter was adjourned at the request of the learned counsel for the petitioner. The petitioner has now filed an affidavit undertaking that they would seek transfer of the registration obtained under the EPF & MP Act from Mumbai to Thiruvananthapuram and shall subject themselves to the jurisdiction of the EPF Organization at Thiruvananthapuram. The petitioner shall take immediate steps for the same and shall produce evidence of the request, made at the EPF Organization Office at Mumbai, before the authority at Thiruvananthapuram, within a month from today. The respondents 1 and 2 shall, after receiving the proceeds from the Mumbai Office, as also the statement as to the contributions made shall consider the 7B application and pass orders thereon taking into account the registration obtained at the Mumbai Office and the contributions made thereon. It is made clear that this Court has not even the stamp of approval to the contributions made by the petitioner at the Mumbai office. It would be the duty of the Officer at Thiruvananthapuram to verify the employees strength and decide on the contributions when

considering 7B application and also decide on whether any modification should be made to the 7A order.

The Writ Petition is disposed of directing the petitioner to expedite the transfer of the registration and the money deposited at the Mumbai Office to the EPF Office at Thiruvananthapuram. The petitioner shall also within one month register itself with the 1st respondent and shall commence paying contribution as against its employees to the 1st respondent from March 2015. The prior period assessment shall be carried out after the receipt of the statement and amounts from the EPF office at Mumbai.

JV

SD/-
K. VINOD CHANDRAN,
JUDGE