

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment Reserved on: September 22, 2015*
Judgment Delivered on: October 13, 2015

+ **LPA 636/2015**

BAL BHARATI PUBLIC SCHOOL Appellant
Represented by: Mr.Abhinav Vashisht, Sr.Advocate
instructed by Mr.Madan and Ms.Priya
Chauhan, Advocates

versus

UNION OF INDIA & ORS. Respondents
Represented by: Mr.Keshav Mohan, Advocate with
Mr.Piyush Choudhary, Advocate

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE MUKTA GUPTA

PRADEEP NANDRAJOG, J.

1. Whether the notification issued by the Central Government under the first proviso to Section 6 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 ('the Act' for short) specifying an establishment or class of establishments to be included therein will survive the subsequent amendment/s made in the first proviso amending the rate at which such establishment or class of establishments will be required to make contribution to the Fund, is the question that arise for consideration in this appeal by Letters Patent.

2. Learned Single Judge of this Court, by the judgment dated August 19, 2015 assailed before us, dismissed the writ petition preferred by the appellant-writ petitioner seeking quashing of the order dated August 02,

2000 passed by the Provident Fund Commissioner whereby the appellant was directed to deposit its contribution to the Fund @ of 12% per month with effect from September 22, 1997. Appellant also sought for the quashing of the notification dated April 09, 1997 issued by the Central Government and in the alternate, prayed for a declaration that the said notification cannot be invoked by the respondents after amendment to the first proviso to Section 6 of the Act, by Amendment Act No.10 of 1998 with effect from September 22, 1997.

3. The narration of facts necessary for determination of the controversy reveals that vide notification No.986 dated February 19, 1982, issued by the Central Government in exercise of its power under Section 1(3)(b) of the Act, educational institutions were brought within the ambit of '*other establishments*' to which provisions of the Act would apply. Challenge to this notification was dismissed by the Supreme Court by its judgment reported as 1988 (Supl.) SCC 518 *M/s DAV College & Ors. Vs. Regional Provident Fund Commissioner & Ors.*

4. By the above-said notification dated February 19, 1982, educational institutions were required to make contribution to the Fund @ of 6.25% per month. It is not in dispute that the Act was amended vide Amending Act No.33 of 1988 with effect from August 01, 1988 to the extent that in Section 6, the employers' contribution to the Fund, was increased from the then 6.25% to 8.33%. For the establishment or class of establishment specified by the notification issued by the Central Government under the first proviso to Section 6, the words '*ten per cent*' were substituted. The Central Government issued a notification dated May 17, 1989 to the effect that from June 01, 1989, the establishment or class of establishments specified under

the first proviso were required to make contribution to the Fund @ of 10%. Just to maintain the chronology, we may note that the Central Government thereafter, issued three consecutive notifications dated June 29, 1990, August 31, 1994 and March 01, 1995 vide which further classes of establishments were specified under the first proviso to be required to make contribution to the Fund @ of 10%. Till now, in none of these notifications, the educational institutions were included as the establishment or class of establishments to which the first proviso to Section 6 would apply.

5. Vide notification dated April 09, 1997, impugned in this case, the Central Government superseded all the notifications referred to in Schedule-I namely notifications dated May 17, 1989, June 29, 1990, August 31, 1994 and March 01, 1995. Schedule-II of notification dated April 09, 1997 provided the class of establishments to which the first proviso to Section 6 shall not apply. Undeniably, the Schools and Educational Institutions were not included in Schedule-II. The establishments other than those specified in Schedule-II were required to make contribution to the Fund @ of 10% with effect from the first day of May, 1997.

6. On September 22, 1997, the in exercise of powers under Article 123 of the Constitution of India, the President of India promulgated the Employees' Provident Funds and Miscellaneous Provisions (Amendment) Ordinance, 1997 whereby Section 6 of the Act and the first proviso thereto were amended. For the words '*eight and one third per cent*' in Section 6, the words '*ten per cent*' and for the words '*ten per cent*' in the first proviso, the words '*twelve per cent*' were substituted. The Ordinance was re-promulgated twice; on December 15, 1997 and April 23, 1998. Eventually, the Ordinance was replaced by the Amendment Act No.10 of 1998 with

effect from September 22, 1997.

7. Appellant, a recognized private school, after notification dated February 19, 1982 of the Central Government under Section 1(3)(b) of the Act had started making contribution to the Fund at the then rate i.e. 6.25%. Later, post 1988 amendment to Section 6, appellant made contribution @ of 8.33%.

8. Respondent issued notice dated February 14, 2000 directing the appellant to deposit employers' contribution to the Fund @ of 10% with effect from May 01, 1997 and @ of 12% with effect from September 22, 1997. Vide reply dated March 13, 2000, this demand was refuted by the appellant on the premise that notification dated April 09, 1997 stands repealed after Amending Act No.10 of 1998 and since no fresh notification has been issued by the Central Government specifying the educational institutions to be included in the establishment or class of establishments covered in the first proviso to Section 6 of the Act the appellant cannot be treated to be included within such class of establishments requiring to pay contribution at the enhanced rate of 12%. Appellant therefore, claimed that the educational institutions would be governed by Section 6 and not the first proviso thereto. The respondent however, vide order dated August 02, 2000 impugned herein, directed the appellant to pay contribution to the Fund @ of 10% with effect from May 01, 1997 and @ of 12% from September 22, 1997.

9. To appreciate the controversy, it shall be apposite to refer to the provisions of the Act, relevant to the issue. Sub-section (3) of Section 1 provides the class of establishments to which the provisions of the Act apply. Proviso to sub-Section (3) of Section 1 however, empowers the

Central Government to specify by notification, any establishment not included in Clauses (a) or (b), to which the provisions of the Act shall apply. Section 6 specifies the rate at which contributions shall be paid by the employer of an establishment to the Fund defined under Section 2(h) to mean the Provident Fund established under a Scheme. The first proviso to Section 6 however, empowers the Central Government, after making such inquiry as it deems fit, to specify by a notification in the official gazette the establishment or class of establishments which shall be liable to pay contribution at the (enhanced) rate provided therein. Sections 1 and Section 6 of the Act read as under:-

“ 1. Short title, extent and application.-

(1) This Act may be called the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) Subject to the provisions contained in section 16, it applies-

(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:

Provided that the Central Government may, after giving not less than two months’ notice of its intention so to do, by notification in the Official Gazette, apply the provisions of this

Act to any establishment employing such number of persons less than twenty as may be specified in the notification.

(4) Notwithstanding anything contained in sub-section 3 of this section or-sub-section 1 of section 16, where it appears to the Central Provident Fund Commissioner, whether on an application made to him in this behalf or otherwise, that the employer and the majority of employees in relation to any establishment have agreed that the provisions of this Act should be made applicable to the establishment, he may, by notification in the Official Gazette, apply the provisions of this Act to that establishment on and from the date of such agreement or from any subsequent date specified in such agreement.

(5) An establishment to which this Act applies shall continue to be governed by this Act notwithstanding that the number of persons employed therein at any time falls below twenty.”

x x x x

“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 percent. 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 or through a 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 percent of his basic wages, dearness 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 “12 percent” shall be substituted:

Provided further that where the amount of any contribution payable under this Act involves a fraction of a rupee, the Scheme may provide for rounding off of such fraction to the nearest rupee, half of a rupee, or quarter of a rupee.

Explanation I – For the purposes of this section dearness allowance shall be deemed to include also the cash value of any food concession allowed to the employee.

Explanation II. – For the purposes of this section, “retaining allowance” means allowance payable for the time being to an employee of any factory or other establishment during any period in which the establishment is not working, for retaining his services.”

10. It had been contended before us by the learned Senior Counsel for the appellant that for an establishment to be included within the class of establishments under the first proviso to Section 6 of the Act, to pay the contribution at the (enhanced) rate prescribed, Central Government must issue a notification specifying such establishment. It had been further contended that there being no notification issued under the first proviso specifying the educational institutions included in the class of establishments therein, the appellant-school will be required to make contribution only as specified in Section 6. Appellant further contended that even if it is assumed that by notification dated April 09, 1997, educational institutions were by way of non-exclusion in Schedule-II, included within the class of establishments specified under the first proviso to Section 6, still once

Section 6 and the first proviso thereto were amended by the Amending Act No.10 of 1998, the said notification stands automatically repealed and unless a fresh notification is issued under the amended Act, the educational institutions will not be deemed to be the establishment specified under the first proviso to Section 6.

11. The General Clauses Act, 1897 is enacted to shorten the language use in parliamentary legislation and to avoid repetition of the same words in the course of the same piece of legislation. The Act does not propose to effect any change in law, but its purpose as observed by the Supreme Court in the decision reported as AIR 1961 SC 838 Chief Inspector of Mines Vs. Karam Chand Thapar, is to place in one single statute different provisions as regards interpretations of words and legal principles which would otherwise have to be specified separately in many different Acts and Regulations. Whatever, the General Clauses Act says, whether as regards the meaning of words or as regards legal principles, has to be read into every statutes to which it applies. Section 24 of the General Clauses Act, 1897 provides for continuation of orders, etc. issued under enactments repealed and re-enacted. Section 24 reads as under:

“24. Continuation of orders, etc., issued under enactments repealed and re-enacted-

Where any Central Act or Regulation, is, after the commencement of this Act, repealed and re-enacted with or without modification, then, unless it is otherwise expressly provided any appointment notification, order, scheme, rule, form or bye-law, made or issued under the repealed Act or Regulation, shall, so far as it is not inconsistent with the provisions re-enacted, continue in force, and be deemed to have been made or issued under the provisions so re-enacted, unless and until it is superseded by any appointment notification,

order, scheme, rule, form or bye-law, made or issued under the provisions so re-enacted and when any Central Act or Regulation, which, by a notification under section 5 or 5A of the Scheduled Districts Act, 1874, (14 of 1874) or any like law, has been extended to any local area, has, by a subsequent notification, been withdrawn from the re-extended to such area or any part thereof, the provisions of such Act or Regulation shall be deemed to have been repealed and re-enacted in such area or part within the meaning of this section.”

12. A bare reading of Section 24 would reveal that where any Central Act or Regulation is repealed and re-enacted, with or without modification, then unless it is otherwise expressly provided any appointment, notification, order, scheme etc. issued under the repealed Act or the Regulation so far as it is not inconsistent with the provisions of the re-enacted Act shall continue in force and be deemed to have been made or issued under the provisions of the new Act unless and until it is superseded by any appointment, notification, order, scheme etc. issued under the provisions of the new Act.

13. In the decision reported as AIR 1961 Mysore 7 Issa Yacub Bichara Vs. State of Mysore, a notification issued under the Foreign Exchange Regulation Act, 1947 empowered certain officers to lodge complaint under the said Act. The Foreign Exchange Regulation Act was however amended. No new notification conferring such powers on any officer was issued under the amended Act. It was thus contended that since no notification has been issued under the amended Act, and the pre-amended Act having been repealed by amendment, the notification issued under the un-amended Act would be deemed to be repealed with the then Act. The Court relying upon Section 24 of the General Clauses Act held that the notification issued under the repealed Act in so far as it is not inconsistent with the provisions of the re-enacted Act shall continue to remain in force and will deem to have been

made or issued under the provisions of the amended Act.

14. In the decision reported as 2002 (3) SCC 481 State of Punjab Vs. Harnek Singh, the Government of Punjab had issued notification under the Prevention of Corruption Act, 1947, authorizing Inspector of Police for the time being serving in the State Vigilance Department or who may be posted in future to serve with the said agency, to investigate the offences under the said Act within the State of Punjab so long as they remain posted in the said agency. In supersession of this notification, the Government of Punjab issued another notification under Section 5A of the 1947 Act authorizing such Inspectors of Police to investigate offences under the 1947 Act even beyond the State of Punjab and the restriction of investigation within the State of Punjab was removed. The 1947 Act was repealed on September 09, 1988 by re-enacting the 1988 Act. Investigation in the offences registered under the 1988 Act, were investigated by the Inspectors of Police who had been authorized to investigate by the notifications issued under the repealed 1947 Act. The accused-respondent filed petition under Section 482 Cr.P.C. questioning the proceeding on the ground that in the absence of a notification issued afresh under the 1988 Act, the Inspectors were not authorized to investigate the cases under Section 17 of the 1988 Act. The High Court of Punjab & Haryana quashed the FIR and the subsequent proceedings. The questions before the Supreme Court thus, were (a) whether the notifications issued by the State Government in exercise of powers conferred upon it under Section 5-A(1) of the 1947 Act (since repealed) empowering and authorizing the Inspector of Police to investigate the cases registered under the said Act, are not saved under the saving provisions of the re-enacted Act; and (b) whether the aforesaid notification being not

inconsistent with the provisions of the re-enacted Act, continues to be in force and be deemed to have been issued under the Prevention of Corruption Act, 1988 till the aforesaid notifications are superseded or specifically withdrawn. The Supreme Court while allowing the appeals answered the second question as under:

“..... We are further of the opinion that the High Court committed a mistake of law by holding that as notifications have not expressly been saved by S. 30 of the Act, those would not enure or survive to govern any investigation done or legal proceeding instituted in respect of the cases registered under the 1988 Act. There is no dispute that 1988 Act is both repealing and re-enacting the law relating to prevention of corruption to which the provisions of Section 24 of the General Clauses Act are specifically applicable. It appears that as Section 6 of the General Clauses Act applies to repealed enactments, the Legislature in its wisdom thought it proper to make the same specifically applicable in 1988 Act also which is a repealed and re-enacted statute. Reference to Section 6 of General Clauses Act in sub-section (1) of Section 30 has been made to avoid any confusion or mis-understanding regarding the effect of repeal with regard to actions taken under the repealed Act. If the Legislature had intended not to apply the provisions of Section 24 of the General Clauses Act to the 1988 Act, it would have specifically so provided under the enacted law. In the light of the fact that Section 24 of the General Clauses Act is specifically applicable to repealing and re-enacting statute, its exclusion has to be specific and cannot be inferred by twisting the language of the enactments. Accepting the contention of the learned counsel for the respondents would render the provisions of 1988 Act redundant inasmuch as appointments, notifications, orders, scheme, rules, bye-laws, made or issued under the repealed Act would be deemed to be non-existent making impossible the working of the re-enacted law impossible. The provisions of the 1988 Act are required to be understood and interpreted in the light of the provisions of the General Clauses Act including Sections 6 and 24 thereof.”

15. Supreme Court in a recent decision dated August 11, 2015 titled Fibre Boards Pvt. Ltd., Bangalore Vs. Commissioner Income Tax, Bangalore (Civil Appeals No.5525-26 of 2005) dealing with the scope of Section 24 of the General Clauses Act, 1897 held:

“Unlike Section 6 of the General Clauses Act, which saves certain rights, Section 24 merely continues notifications, orders, schemes, rules etc. that are made under a Central Act which is repealed and re-enacted with or without modification. The idea of Section 24 of the General Clauses Act is, as its marginal note shows, to continue uninterrupted subordinate legislation that may be made under a Central Act that is repealed and re-enacted with or without modification. It being clear in the present case that Section 280ZA which was repealed by omission and re-enacted with modification in section 54G, the notification declaring Thane to be an urban area dated 22.9.1967 would continue under and for the purposes of Section 54G. It is clear, therefore, that the impugned judgment in not referring to Section 24 of the General Clauses Act at all has thus fallen into error.”

16. A Division Bench of the Jharkhand High Court in the decision reported as 2003 (1) JCR 536 Nicco Jubilee Park Ltd. Vs. State of Jharkhand & Ors. dealt with a question as to whether a notification issued by the State Government in terms of Section 3(1) of the Bihar Entertainment Tax Act, 1948 as it stood prior to its repeal, could be relied upon in the absence of a fresh notification issued post amendment in the Act. Learned Division Bench, relying upon Section 24 of the General Clauses Act, 1897 and the interpretation accorded thereto, held that since nothing was shown that either a notification had been issued under the amended Act or that it in any manner was inconsistent with the provisions of the Act as they stood

post amendment, the notification is validly saved by Section 24 of the Act.

17. In the present case, amendment in Section 6 and the first proviso thereto by the Amending Act No.10 of 1998, is only to the extent that in Section 6 of the un-amended Act, for the words '*eight and one third per cent*', the words '*ten per cent*' were substituted. Similarly, in first proviso to Section 6 of the un-amended Act, for the words '*eight and one third per cent*' and '*ten per cent*', the words '*ten per cent*' and '*twelve per cent*' were substituted. We note that it is not the case urged before us that the amended Act is in any manner inconsistent with any of the provisions of the Act as it stood prior to the amendment. Therefore, there is no merit in the submission made on behalf of the appellant that unless a notification under the first proviso to Section 6 of the Act as it stands post amendment, is issued, the appellant cannot by operation of the notification issued under the Act prior to the amendment, be held liable to pay contribution to Fund @ of 12% per month instead of 10% per month with effect from the date as claimed by the respondents.

18. Resultantly, we find no merit in the appeal. The same is dismissed with costs against the appellant and in favour of the second respondent.

(PRADEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

OCTOBER 13, 2015
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