

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.01.2017

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR

AND

THE HON'BLE MR.JUSTICE N.AUTHINATHAN

Writ Appeal No.1974 of 2012

Gudalur Taluk Muslim Orphanage Committee

Regd. Society S.No.40/76

C.H.Nagar, Chambala

Gudalur, Nilgiris District

Rep. by its General Secretary

Mr.K.A.Mohammed Kutty Hajee

..... Appellant

vs.

1.The Regional Provident Fund Commissioner

Dr.Balasundaram Road

Coimbatore

2.The Assistant Provident Fund Commissioner

Employees Provident Fund Organisation

Dr.Balasundaram Road, Coimbatore

3.The Enforcement Officer

Employees Provident Fund, Alexander Cottage

State Bank Road, Ootacamund, Nilgiris.

..... Respondents

Writ Appeal under clause 15 of the Letters Patent against the order passed in W.P.No.5579 of 2009 dated 30.03.2012.

WP.No.5579/2009:Writ Petition is preferred under Article 226 of the Constitution of India praying for the issue of a Writ of Certiorarified Mandamus to call for the record of the respondents culminating with the order of the first respondent in his proceeding No. TN/CB/72427/ENF/CC18/2008 dated nil of January 2009 and signed in December 2008 and quash the same and also direct the respondents to treat the GTMO Primary School Gudalur GTMO Matriculation School Gudalur and the GTMO Higher Secondary School Gualur as three independent establishments and cover the employees employed therein separately in accordance with the provisions of the Employees Provident Fund and Miscellaneous Provisions Act.

For appellant : Mr.C.K.Chandrasekar

For Respondents : Mr.M.Jayaraman

JUDGMENT
(delivered by S.MANIKUMAR, J)

Challenge in this writ appeal is to an order made in W.P.No.5579 of 2009 dated 30.03.2012, by which, the writ court, declined to quash the order dated Nil of the Regional Provident Fund Commissioner, Coimbatore and consequently, refused to issue any directions to the respondents, to treat GTMO Primary School, GTMO Matriculation School, GTMO Higher Secondary School, Gudalur, as three independent establishments.

2. Facts leading to the writ appeal are that Gudalur Taluk Muslim Orphanage Committee, is a registered society, established, in 1976, for the purpose of providing free education to the poor and needy Muslim children. Appellant society has started GTMO Primary School in 1984 and approval was granted by the Director of Elementary Education, at Chennai. According to the appellant, at the time of filing writ petition, they were 10 teachers and one Ayah working in the primary school.

3. In 1994, GTMO Matriculation school was started, after obtaining necessary approval from the Director of Matriculation Schools, Chennai. There were 25 teachers and 3 staffs working in the school.

4. High school, started, was upgraded as Higher Secondary School in 2001, duly approved by the Director of School Education, Chennai. At the time of filing the writ petition, there were 24 teachers and 2 staffs working in the school.

5. According to the appellant, Enforcement Officer of the Employees Provident Fund, Ooty, Nilgiris (respondent No.3), visited the schools and found that 10 teachers and 1 staff were working in Primary school, 16 teachers and 2 staff were working in Matriculation school and 17 teachers and 1 staff were working in Higher Secondary School. The Enforcement Officer of the third respondent intimated that the number of staff in the schools were more more than 20 and therefore the institutions are covered under the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (in short EPF Act). Though the appellant society claimed that the three schools are different entities, and they cannot be brought under one entity, the third respondent did not agree. Therefore the appellant was constrained to submit an application on 01.10.2005, enclosing a list of 20 teachers, as per their choice.

6. The Regional Provident Fund Commissioner, Coimbatore, vide letter dated 10.10.2005 declared that the Employees Provident Fund and Miscellaneous Provisions Act, 1952 and the regulations made thereunder are applicable to GTMO Educational institutions, with effect from 01.12.2003 and allotted Code No.TN/CB/72427 and fixed the employees contribution at 12%, with effect from 01.12.2003 onwards. The Regional Provident Fund Commissioner, Coimbatore, also directed the appellant to pay arrears of EPF for the period from 01.12.2003 to 31.10.2005. In spite of representations of the appellant that the schools are separate entities, third respondent, namely the Enforcement Officer, EPF, threatened the appellant that if EPF amount is not paid from 2003, arrears would be calculated from 1984. Thereafter, the Assistant Provident Fund Commissioner, Coimbatore, Employees Provident Fund Corporation, Coimbatore (respondent No.2) passed an order on 23.05.2006 under Section 7A of the EPF Act, directing GTMO Education Institutions to pay a sum of Rs.2,25,163/- for the period from December 2003 to April 2006 towards EPF dues for 20 employees.

7. The appellant applied to the Assistant Provident Fund Commissioner, Coimbatore praying for exemption from payment of employees contribution for the period between December 2003 and April 2006. Vide order dated 17.08.2006, the said authority granted waiver of the employees' share of the Provident Fund contribution for the period between December 2003 to August 2005. A sum of Rs.98,826/- has been collected from the appellant by way of demand draft, even before the order of waiver was passed. The Regional Provident Fund Commissioner passed an order on 09.09.2008 under Section 14B of the EPF Act for recovery of a sum of Rs.82,046/- being damages for the delayed payment of EPF charges for the period from December 2003 to October 2006. There was also another order on the same day viz. 09.09.2008 directing GTMO Education Institutions to pay a sum of Rs.29,568/- towards interest, under Section 7(Q) EPF Act. The appellant has paid both the amounts.

8. The Assistant Provident Fund Commissioner passed an order dated Nil of January 2009, under Section 7(A) of the Act, directing GTMO Education Institutions to pay a sum of Rs.9,73,528/- for the period from March 2006 to October 2008, towards EPF charges for non-enrolled employees. According to the appellant no proper hearing was given before the aforesaid order was passed. Though in the said order, it was shown that 19 to 75 employees were enrolled, details were not given. The appellant reiterated that all the three schools are independent and separate entities. Therefore, they are not liable to pay such a huge sum. According to the appellant, when the matter stood thus, on 16.03.2009, the Assistant Provident Fund Commissioner, Coimbatore, passed an order threatening to take criminal action against the appellant and the correspondent, if contributions

are not remitted. On 12.03.2009, the Assistant Provident Fund Commissioner, Coimbatore, passed an order under Section 8(F) of the Act, addressing the Manager of Syndicate Bank, Gudalur Branch requiring him to pay a sum of Rs.9,73,528/- and another sum of Rs.1,12,114/- towards arrears of EPF. In the above said circumstances, the appellant has filed W.P.No.5579 of 2000.

9. Before the writ court, the Assistant Provident Fund Commissioner, in his counter affidavit has submitted that Gudalur Taluk Muslim Orphanage Educational Institution run by Gudalur Taluk Munslim Orphanage Committee was brought under the purview of EPF Act with effect from 01.12.2003, as per the order dated 10.10.2005 and allotted Code No.TN/72427. Coverage was made in the name of GTMO Educational institutions and not in the name of the Trust. As the institutions failed to remit the dues for the period 12/2003 to 04/2006, an order under Section 7-A of the Act was passed determining the dues as Rs.2,25,163/- for the above said period. The Employer had remitted the dues, as assessed except the employees share of contribution and requested for waiver of the employees' share. Considering the financial difficulties explained in the employer's letter dated 09.08.2006 and the recommendation of the Area Enforcement Officer dated 10.08.2006, request of the employer for waiver of the employees' share of contribution for the period between 12/2003 to 08/2005 was accepted. As the employer defaulted in payment of contribution, damages were levied under Section 14-B and interest under Section 7Q representing Rs.82,046/- and Rs.29,568/- respectively for the above said period. The above said amounts were paid.

10. Subsequently, the Area Enforcement Officer, vide Inspection Report dated 10.11.2008 and 19.11.2008 respectively, reported that 19 to 75 employees were not enrolled from 01.06.2006 to 01.10.2008. Statement dated 19.11.2008, in respect of non-enrolled employees was prepared and handed over to the Administrative Officer of the educational institutions, on behalf of the employer. It was also acknowledged by the appellant with date and seal on 19.11.2008. During Section 7-A enquiry, Mr.K.S.Mohammed Kutti Haji, correspondent, appeared on 05.01.2009 before the Assistant Provident Fund Commissioner, Employees Provident Fund Organisation, Coimbatore (respondent No.2). Fact of non-enrollment was brought to the notice of the appellant. In response to the same, appellant contended that the institutions are for orphan children and no donation is collected. However, as EPF Act is a social security legislation to provide social welfare benefits to the employees, dues in respect of non-enrolled employees were assessed and proceedings was signed on 13.01.2009. As the appellant failed to remit the amount as assessed under Section 7-A of the Act, a show-cause notice dated 16.03.2009 was issued for recovery of Rs.9,73,528/- determined for the period from 03/06 and 10/08 and accordingly proceedings was issued. In spite of notice, the appellant did

not remit the assessed amount and hence an order under Section 8-F of the Act, attaching the Bank accounts was issued and as a result of which, amount was recovered. According to the respondents, only after providing sufficient opportunity, amount was determined and thereafter, recovery proceedings were initiated. For the above said reasons they prayed to sustain the order impugned.

11. Declining to accept the contention of the appellant that the three educational institutions are different entities and placing reliance on the judgment of the Hon'ble Apex Court in Noor Niwas Nursery Public School v. Regional Provident Fund Commissioner and others reported in 2001(1) SCC 1, vide order dated 30.03.2012 at paragraph No.10, writ court ordered as hereunder:

10. In this context, it is necessary to refer to judgment of the supreme Court reported in (2001) 1 SCC 1 [Noor Niwas Nursery Public School v. Regional Provident Fund Commissioner and others], wherein the Supreme Court in identical circumstances held that two schools run by the same educational agency was a single unit in terms of Section 2A of the EPF Act. In paragraphs 3 to 6, the Supreme Court held as follows:-

"3. The Provident Fund Commissioner on this material held that the two institutions constitute one and the same establishment and, therefore, are covered by the Act. This order of the Provident Fund Commissioner was unsuccessfully challenged before the High Court. Hence this appeal.

4. Whether two units are one or distinct will have to be considered in the light of the provisions of Section 2-A of the 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. In fact, this

Court set out certain tests in *Pratap Press v. Secy., Delhi Press Workers' Union*¹. However, we may point out that each case would depend upon its own peculiar facts and has to be decided accordingly.

5. In the present case, when two units are located adjacent to one another and there are only two teachers with an aaya, a clerk and a peon, it is difficult to believe that the society which runs 30 schools would run a separate school consisting of such a small number of staff. If the unit of the appellant School was not part of the unit of Francis Girls Higher Secondary School, the Head Clerk, Mrs Wadhavan could not have been in possession of the particulars of the appellant School and could not have furnished such particulars to the Inspector when he visited the school in connection with the grant of a code number. Undisputably, the two units are run by the same society and they are located in one and the same address thereby establishing geographical proximity and nothing worthwhile has been elicited in the cross-examination of the Inspector in regard to inquiries made by him from Mrs P. Wadhavan. Mrs P. Wadhavan was not examined before the Provident Fund Commissioner. All these facts clearly point out to one factor that the two units constitute one single establishment. After all the appellant School caters to nursery classes, while the higher classes are provided in Francis Girls Higher Secondary School. Thus, the link between the two cannot be ruled out. In the facts and circumstances of the case, we hold that the view taken by the Provident Fund Commissioner as affirmed by the High Court in this regard is correct.

6. However, the learned counsel for the appellant drew our attention to the letter sent to Francis Girls Higher Secondary School wherein the said School has been excluded from the purview of the

Act in view of the fact that the provident fund in respect of all the employees is subscribed under another scheme. The learned counsel submitted that if the two units were put together as a single establishment, the Act would be applicable and otherwise not, inasmuch as it falls short of the number of minimum of employees for the applicability of the Act under Section 1 (3)(b) of the Act. We are not impressed with this argument. The two establishments have more than 20 employees and the exemption granted under Section 17 of the Act is subject to the condition that such exclusion will not apply to the appellant's unit because the same would not be covered under another scheme for subscribing to the provident fund. When the entire establishment is covered by the Act, only part of the establishment is excluded and condition of exclusion being applicable only to a part, we fail to understand as to how the appellant can rely upon the said letter to claim non-applicability of the Act on the ground that it falls short of the number of employees."

12. By inviting the attention of this court to the proceedings of approval granted by different authorities of the education department for approval/recognition of GTMO Primary School, GTMO Matriculation School, GTMO Higher Secondary School, Gudalur, respectively Mr.C.K.Chandrasekar, learned counsel for the appellant, contended that all the three schools are different entities and that therefore, the authorities under the EPF Act and writ court, erred in not treating the appellant as a single entity. According to him, none of the three schools had more than 20 staff, and therefore the appellant cannot be brought under the purview of the Act. In this context, he also took us through the staff structure in the above schools. Inviting attention of this court to an order passed in W.P.No.3462/1999 dated 22.10.2008, and ground No.6 of the Memorandum of appeal, learned counsel for the appellant, submitted that in the above said writ petition, a contrary view has been taken by the writ court while dismissing the challenge made by the Regional Provident Fund Commissioner, Tirunelveli.

13. Based on the counter affidavit filed by the Assistant Provident Fund Commissioner, Employees Provident Fund Organisation, Coimbatore, Mr.M.Jayaraman, learned counsel for

the respondents prayed to sustain the order of the writ court.

14. He also submitted that only after accepting the request for waiver of employees' share of contribution for the period between 12/03 to 08/05, the appellant was directed to pay the dues and that the same was complied with. The Employer's share of contribution was made on 03.08.2006 by way of a demand draft. He also submitted that after making a request for waiver, of the employees' contribution and making payment of the employer's contribution, in the year 2006, it is not open to the appellant to contend that they would not come under the purview of the EPF Act and it is the duty of the employer to extend the statutory benefits to all the eligible employees. He further submitted that though it is contended that the appellant is running the educational institutions for orphan children, yet the benefit of social security scheme to the staff cannot be avoided.

15. Earlier, during the course of hearing, Mr.C.K.Chandrasekar, learned counsel for the appellant submitted that in the event of this court not inclined to reverse the order of the writ court, the employees' contribution for the period between 03/06 to 10/08, be at least, waived. Taking note of a concession given earlier by the Employees Provident Fund Organization in the year 2006 for the period between 12/03 to 08/05, we directed Mr.Jayaraman, learned counsel to get instructions. Reverting, he submitted that, as per Head Office directions, waiver of employees' share has been stopped and it is the responsibility of the employer to remit both the shares of the contribution, from day one of employment. He, therefore, submitted that waiver of the employees' share cannot be considered.

16. According to him, the total dues for the period from March 2006 to October 2008 towards the EPF charges, is Rs.9,73,528/-. It is also his contention that penal interest has to be levied and the establishment does not satisfy any of the condition, for waiver.

Heard the learned counsel for the parties and perused the materials available on record.

17. Material on record shows that when instructions were given by the Enforcement Officer, Employees Provident Fund Organisation, Ooty dated 04.02.2005, GTMO Educational Institutions, represented by its General Secretary/Correspondent, has submitted a letter dated 01.10.2005 to the Assistant Provident Fund Commissioner, Office of the Regional Provident Fund Commissioner, Coimbatore, stating that the Orphanage Committee has decided to get cover under the Employees Provident Fund and Miscellaneous Provisions Act, 1952. The committee has also enclosed necessary particulars.

18. On the basis of the particulars furnished by the GTMO Educational Institutions and on the basis of the inspection and records, the Assistant Provident Fund Commissioner, Coimbatore has passed an order on 10.10.2005 stating that the establishment has employed 20 persons on 01.12.2003 and therefore, the provisions of the EPF Act and the scheme framed thereunder are applicable to the establishment with effect from 01.12.2003. He has also assigned code No.TN/CB/72427 for appellant for the purpose of making compliance with the various provisions of the EPF Act and the schemes framed thereunder namely, E.P.F. Scheme, 1952, Employees Pension Scheme, 1995 and Deposit Linked Insurance Scheme, 1976.

19. That apart, the said authority, in his order dated 10.10.2005 has also observed that E.P.F. and E.D.L.I. dues for the period between 01.12.2003 to 31.10.2005, have to be deposited on or before 15.11.2005. Thereafter, the second respondent, Assistant Provident Fund Commissioner, Coimbatore, has written a letter dated 23.11.2005 to the Administrative Officer of M/s.GTMO Educational Institutions (run by GTMO Orphanage Committee), C.H.Nagar, Gudalur, The Nilgiris District stating that, as per the coverage memo dated 10.10.2005, P.F. dues have to be remitted from the period from 01.12.2000 onwards, but the institutions have remitted P.F. dues for the months from 12/2003 and 10/2005 only. Therefore, the Assistant Provident Fund Commissioner, Coimbatore has stated institutions have not remitted the dues for the period 01/2004 to 09/2005 and required them, to remit the dues in State Bank of India and to submit a triplicate copy of the challan to the office of the Provident Fund Commissioner to avoid further legal action.

20. It should be noticed that though the appellant has contended that they were constrained to submit an application for coverage of the educational institutions under the EPF Act, they have not agitated over the action of the Assistant Provident Fund Commissioner, at any point of time. When the matters stood thus, by observing that appellant has not remitted the provident fund, insurance fund, employees pension fund contribution, administrative charges towards provident fund and insurance fund dues for the months of 12/03 to 04/06 in accordance with the provisions of EPF Act, Deposit linked Insurance Scheme, 1976 and Employees Pensions Scheme, 1995, the Provident Fund Organisation, decided to conduct an enquiry under Section 7-A of the EPF Act. The Employer has been summoned vide notice dated 17.03.2010 to appear before the Assistant Provident Fund Commissioner, Coimbatore.

21. Despite several notices, none appeared before the Assistant Provident Fund Commissioner, Coimbatore and not responded to the notice issued for personal hearing. Before the Assessment authority, Enforcement Officer, Ooty has deposed that inspite of several reminders through telephone, and personally,

the employer has not produced the relevant records. However, based on the available records, it was seen that twenty people shown to be covered from 01.09.2005 were actually coverable from 01.12.2003. Further, as per the attendance and computerised salary statement for March, 2006 and April, 2006, it was seen that there were 55 more employees, which the employer has failed to enroll. The same has been taken into account while furnishing the dues report. The employer has claimed that since GTMO is an orphanage, most of the employees do charitable service and they do not take salary. However, it was verified from the computerised salary statement for March, 2006 and April, 2006 that all the 74 employees have received salary and to this effect, they have affixed their signatures. Therefore the employer has been directed to remit the PF in respect of 55 non enrolled employees for the months of March, 2006 and April, 2006. The employer has also been advised to produce the computerised salary statements for the previous months in order to examine the possibility of enrolling the employees from a retrospective date. He has also deposed that the establishment was in default from 12/2003 and also not enrolled 55 employees.

22. On the basis of available records, the Assistant Provident Fund Commissioner, has recorded that there were provident fund dues from 12/03 to 04/06, as hereunder

Month	EES share	ERs share	A/c No.2	A/c 10	A/c 21	A/c 22	Total
Dec-03	4150	1269	380	2881	173	3	8856
Jan-04	4150	1269	380	2881	173	3	8856
Feb-04	4150	1269	380	2881	173	3	8856
Mar-04	4150	1269	380	2881	173	3	8856
Apr-04	4150	1269	380	2881	173	3	8856
May-04	4150	1269	380	2881	173	3	8856
Jun-04	4150	1269	380	2881	173	3	8856
Jul-04	4150	1269	380	2881	173	3	8856
Aug-04	4150	1269	380	2881	173	3	8856
Sep-04	4150	1269	380	2881	173	3	8856
Oct-04	4150	1269	380	2881	173	3	8856
Nov-04	4150	1269	380	2881	173	3	8856
Dec-04	4150	1269	380	2881	173	3	8856
Jan-05	4150	1269	380	2881	173	3	8856
Feb-05	4150	1269	380	2881	173	3	8856
Mar-05	4150	1269	380	2881	173	3	8856
Apr-05	4150	1269	380	2881	173	3	8856

May-05	4150	1269	380	2881	173	3	8856
Jun-05	4150	1269	380	2881	173	3	8856
Jul-05	4150	1269	380	2881	173	3	8856
Aug-05	4150	1269	380	2881	173	3	8856
Mar-06	6960	2447	638	5133	293	5	15476
Apr-06	11110	3398	1018	7713	463	9	23711
Total	105220	32494	9636	73347	4389	77	225163

Accordingly he has passed an order. Thereafter, he has directed the appellant to remit the said amount to the respective Employees Provident Fund Account numbers maintained at the State Bank of India forthwith. The employer has been instructed that all the belated remittance would attract levy of damages under section 14-B of the Act to the extent of the amount equal to the arrears, which shall not less than such rates specified in the Scheme. In addition, the employer would be liable to pay simple interest, at the rate of 12% as per Section 7Q of the EPF & MP Act 1952, on any amount due from the employer under the Act from the date on which the amount become due till the date of remittance. The employer has also been informed that if he fails to comply with the above orders within 15 days of receipt of the order, action would be initiated to file Prosecution complaints in the Court of law, without any further notice. Besides, action would be initiated to recover the arrears in the manner specified in Section 8B to 8G of the Act.

23. Thereafter, a sum of Rs.98,826/- by way of demand draft bearing No.263815 dated 03.08.2006 drawn on Syndicate Bank is stated to have been remitted pertaining to the contribution payable for the period between 12/03 to 08/05. On the request of the appellant, the Enforcement Officer, Ooty, has sent a letter dated 10.08.2006 for waiver of the employees' share of the contribution for the period from 12/03 to 08/05 and accordingly, the same has been communicated vide letter dated 17.08.2006 to M/s.G.T.M.O. Educational Institutions, Gudalur. Subsequently, vide letter dated 18.08.2008, the appellant has been reminded of payment of contribution for the period between 12/2003 to 10/2006 and the appellant has been summoned for personal hearing on 04.09.2008 to show cause as to why interest under Section 7Q of the Act, should not be recovered from the employer for having made belated payment of contribution and administrative charges. Here again, the employer has neither made any reply nor availed any opportunity of personal hearing, in spite of receipt of summons.

24. As there was no explanation, the Regional Provident Fund Commissioner, Coimbatore passed orders on 09.09.2008 directing the Managing Director of M/s.G.T.M.O. Educational Institutions,

to remit a sum of Rs.29,568/-, within 15 days from the date of receipt of the proceedings. As regards damages under Section 14B of the EPF Act, 1952 for the belated payment of (i) provident fund contributions, (ii) Administrative/Inspection charges; (iii) Pension fund contributions; (iv) Deposit Linked Insurance Fund contributions and (V) the EDLI administrative/inspection charges, required by law for the period between 12/03 to 10/06, there was no representation and therefore, by recording the finding that delay in payment has not been disputed, in exercise of powers under Section 14B of the Act, on 09.09.2008, the Regional Provident Fund Commissioner, Coimbatore, has ordered damages of Rs.82,046/-.

25. Thereafter, vide letter dated 25.09.2008, the Regional Provident Fund Commissioner - I, Coimbatore, has instructed G.T.M.O. Educational Institutions, Gudalur, the appellant herein, to ensure compliance with the requirements of the Act. Once again on 23.10.2008, the Assistant Provident Fund Commissioner, Coimbatore, summoned the respondent M/s.GTMO Educational Institutions, to appear on 25.11.2008, stating that appellant has failed to enroll all the employees engaged by them, from the date of joining into PF membership and certain employees of the appellant establishment are doing regular work independently, and they have not been enrolled into PF membership, Section 7A notice has been issued for the assessment of dues for the period from 03/2006 to 10/2008.

26. On 05.01.2009, one K.A.Mohammed Kutty Hajee, Correspondent has appeared and submitted that dues for the period October 2008 has been remitted and produced a challan copy. However, the Enforcement Officer, filed reports dated 10.11.2008 and 19.11.2008 stating that 19 to 75 employees were not enrolled from 01.06.2006 to 01.10.2008. He has also prepared a statement in respect of non-enrolled staff, and handed over the same to the Administrative Officer of the appellant herein. Before the Assistant Provident Fund Commissioner, the employer seemed to have admitted that non-enrolment existed in the establishment and due to financial problem, provident fund could not be deducted and remitted. They have also submitted that no permanent employees were working. Contentions that they are institutions for orphan children and no donation has been collected were also made. However, taking note of the fact that the EPF Act is a social legislation, with the aim to provide social welfare to the employees, the Assistant Provident Fund Commissioner, ordered to pay a sum of Rs.9,73,528/-.

27. As stated supra, as early as on 01.10.2005 itself, G.T.M.O Education Institutions, Nilgiris, run by Gudalur Taluk Muslim Orphanage Committee, appellant herein, has decided to get cover under the Employees Provident Fund and Miscellaneous Provisions Act, 1952 and also allotted Code No.TN/CB/72427 vide order dated 10.10.2005 and that the employer has been instructed to pay EPF and EDLI dues for the period from 01.12.2003 to

31.10.2005 on or before 15.11.2005. A sum of Rs.2,25,163/- has been ordered to be paid for the period between 12/03 to 04/06, and also indicated that for non payment, action would be initiated to file complaints in the court of law, without any notice. Besides action would be initiated to recover the arrears in the manner specified in Section 8B to 8G of the Act.

28. Thereafter, a sum of Rs.98,826/- by way of demand draft drawn on Syndicate Bank has been received towards the contribution between 12/03 to 08/05. The employees' share of the contribution has also been waived for the abovesaid period. Thereafter, interest under Section 7Q and damages under Section 14B of the E.P.F. Act has been levied. None of the above orders have been challenged. Per contra, admittedly, the appellant has remitted interest and damages, which is evident from the averments made in paragraph 17 of the affidavit filed in support of the writ petition. Subsequently, the appellant has not enrolled 19 to 75 employees from 01.06.2006 to 01.10.2008 and dues for the period from 04/2008 to 10/2008 was not remitted in respect of regular employees. The Enforcement Officer has submitted two inspection reports dated 10.11.2008 and 19.11.2008 respectively. On receipt of the notice, one Mr.K.Mohammed Kutti Hajee, has appeared. Financial problem for non-enrollment has been admitted. But the appellant has contended that no permanent employees are working.

29. After considering the material on record, evidence of the appellant, the Assistant Provident Fund Commissioner, Coimbatore, has passed an order directing payment of Rs.9,73,528/- towards Provident Fund, Insurance Fund, Employees Pension Fund contribution and administrative charges towards Provident Fund and Insurance Fund for the period 03/2006 to 10/2008. The Assistant Provident Fund Commissioner, Coimbatore has also stated that if there is belated remittance, damages under Section 14B and interest under Section 7Q of the Employees Provident Fund and Miscellaneous Provisions Fund Act, 1952, would be applied. In the year 2005 itself, the appellant has volunteered to get coverage under the Employees Provident Fund and Miscellaneous Provisions Act, 1952, and assigned Code No.TN/CB/72427 and it is not open to the appellant to turn around and contend that each educational institution is a separate entity and that GTMO Schools do not fall under the ambit of Employees Provident Fund and Miscellaneous Provisions Act, 1952.

30. Though Mr.C.K.Chandrasekar, learned counsel for the appellant pressed in to service a decision made in W.P.No.3462/1999 dated 22.10.2008, to reverse the case of the Assistant Provident Fund Commissioner, Coimbatore, on facts and circumstances of this case, and as observed earlier, when the appellant has sought for coverage, the same cannot be resiled. It is also the submission of the learned counsel for the

appellant that from 2009 onwards, the appellant has been remitting contribution regularly. We do not find any infirmity in the order of the writ court warranting interference.

In the result, Writ Appeal is dismissed. However, there shall be no order as to cost.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

Asr

To

1.The Regional Provident Fund Commissioner
Dr.Balasundaram Road, Coimbatore

2.The Assistant Provident Fund Commissioner
Employees Provident Fund Organisation
Dr.Balasundaram Road, Coimbatore

3.The Enforcement Officer
Employees Provident Fund, Alexander Cottage
State Bank Road, Ootacamund, Nilgiris.

+1 cc to Mr.M.Jayaraman Advocate sr 559/17

+1 cc to Mr.C.K.Chandrasekhar Advocate sr 1032/17

W.A.No.1974 of 2012

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