



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.09.2022

PRESENT

THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN

WP(MD) No.22547 of 2022

and

WMP(MD)Nos.16724, 16725 & 16726 of 2022

M/s.Kanyakumari Medical Mission,
Rep.by its Medical Superintendent,
Dr.Rajesh Sathiya
Neyoor, Kanyakumari District.

... Petitioner

vs.

- 1.The Employees Provident Fund
Organization,
Rep.by its Assistant Provident Fund
Commissioner,
Sub-regional Office,
65-A, Water Tank Road, Nagercoil,
Kanyakumari District – 629 001.
- 2.The Branch Manager,
Canara Bank, College Road,
Nagercoil, Kanyakumari District.
- 3.The Branch Manager,
Indian Bank, Neyoor, Kanyakumari District.
- 4.The Branch Manager,
State Bank of India,
Thingal Nagar, Kanyakumari District.
- 5.The Branch Manager,
Indian Overseas Bank,
Eraniel, Kanyakumari District.



6.The Branch Manager,
Canara Bank,
Neyoor, Kanyakumari District.

7.M/s.CSI Institute of Technology,
Thovalai Post, Kanyakumari District.

... Respondents

(R7 suo motu impleaded vide
order dated 26.09.2022)

Prayer : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari and Mandamus, to call for the records on the file of the 1st respondent in TRN/NGL/ENF/C32/33089/8F/2022 dated 11.08.2022 issued to the 2nd respondent and quash the same and consequently forbear the 1st respondent from taking recovery proceedings against the petitioner by collecting money from the bank accounts of the petitioner with the respondents 2 to 6 by issuing proceedings under section 8F of the EPF and MP Act to recover any money due from the third party EPF account holders, other than the money legally due from the petitioner to the 1st respondent in EPF Code No.MDNKL 000768500.

For Petitioner : Mr.M.Azeem

For Respondents : Mr.Mahaboob Athif for R1

Mr.C.Karthik for R2 to R4 & R6



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ORDER

The petitioner is running a number of hospitals as well as para medical educational institutions. The petitioner and its constituent institutions come under the purview of The Employees' Provident Fund and Miscellaneous Provisions Act, 1952. A separate code has been allotted for them. The petitioner is paying the contributions for their employees regularly. While so, for the provident fund dues of the seventh respondent, recovery was effected from the petitioner's bank account. The stand of the petitioner is that it was illegal and action is proposed to be initiated for obtaining refund. While so, the impugned order dated 11.08.2022 came to be passed under Section 8F of the Act and communicated to the Branch Manager, Canara Bank, Nagercoil Branch directing the bank to transfer a sum of Rs. 90,99,917 lying in the account of the petitioner to satisfy the provident fund dues of the seventh respondent. A copy of the said communication was given to the petitioner by their banker. Challenging the same, this writ petition has been filed.

2.The learned counsel for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition. He assailed the impugned order on several grounds. He contended



that even without giving an advance intimation, the petitioner's bank account has been frozen. This according to him is a grave violation of principles of natural justice. His major contention is that the authority erred in clubbing two independent establishments. The petitioner is a medical institution. The seventh respondent is an institution imparting education in engineering. There is no functional integrality between them. The learned counsel for the petitioner relied on the following case laws in support of his arguments :

“1.1998 (1) LLJ 1060 (SC) (Regional P.F.Commissioner v. Dharmasi Morarji Chemical Co.Ltd).

2.CDJ (2007) SC 292 (Regional P.F.Commissioner v. M/s.Raj's Continental Exports Pvt., Ltd).

3.CDJ (2011) MHC 2681 (Bhucoalka Steel Industries Ltd. vs. The Registrar, EPFAT, New Delhi) and

4.2012(3) LLJ 736 (Kerala) (Attukal Bhagavathy Temple Trust, Thiruvananthapuram).”

He pointed out that if the impugned order is not interfered with, the functioning of the hospitals run by the petitioner would be totally paralysed and that would endanger public interest. He called upon this Court to quash the impugned communication.



3.Per contra, the learned standing counsel appearing for the first respondent submitted that the impugned communication does not call for any interference.

4.I carefully considered the rival contentions and went through the materials on record. There is no dispute that the petitioner is functioning under the Kanyakumari Diocese of Church of South India. I wanted to know the legal character of the petitioner – is Kanyakumari Medical Mission a registered trust or a registered society or an incorporated company ?. The answer is in the negative. The petitioner is neither a trust nor an incorporated company. It is not even a registered society. In other words, it is not an independent legal entity or a juristic personality. It is run by Kanyakumari Diocese of Church of South India. In the typed set of papers filed by the petitioner, the extracts from the Constitution of the CSI, Kanyakumari Diocese have been enclosed. Chapter XI of the said Constitution deals with the Board of CSI Institute of Technology, the seventh respondent herein. The membership of the Board governing the seventh respondent is as follows :

“43.1.Membership

A.The Bishop-Ex-officio Chairman



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B.The Correspondent/Secretary appointed by the Executive Committee-Ex-officio.

C.The Principal of the Institute – Ex-officio

D.The Bursar of the Institute appointed by the Executive Committee – Ex-officio.

E.Eight persons elected by the Diocesan Council from among its own members of whom one shall be a woman, one shall be a Presbyter and one shall be from unrepresented section.

F.Government representatives, if any.”

Chapter-XVI deals with the Board of Health, Medical Care, Nursing and Paramedical Education. Its membership is as follows :

“A.The Bishop – Ex-officio Chairman

B.The Three officers of the diocese – Ex-officio

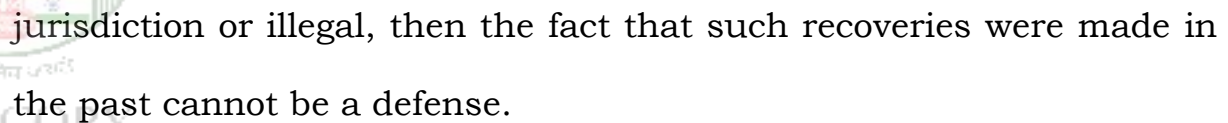
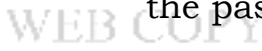
C.The Medical Superintendent – Ex-officio Secretary

D.The Hony. Treasurer of the Kanyakumari Medical Mission – Ex-officio.

F.The Nursing Superintendent of the Kanyakumari Medical Mission – Ex-officio.

G.Eight members elected by the Diocesan Council of whom one shall be a woman, one shall be a Presbyter and one shall be from unrepresented section.

All the Medical Officers in charge of branch Hospitals will be invitees.”



7.The expression “employer” has been defined in Section 2(e) of the Act as follows :

<https://www.mhc.tn.gov.in/judis>



(ii) in relation to any other establishment, the person who, or the authority which, has the ultimate control over the affairs of the establishment, and where the said affairs are entrusted to a manager, managing director or managing agent, such manager, managing director or managing agent.”

Section 2A of the Act as follows :

“2A. Establishment to include all departments and branches.—For the removal of doubts, it is hereby declared 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.”

Section 8B of the Act is as follows :

“8B. Issue of certificate to the Recovery Officer.—(1) Where any amount is in arrear under section 8, the authorised officer may issue, to the Recovery Officer, a certificate under his signature specifying the amount of arrears and the Recovery Officer, on receipt of such certificate, shall proceed to recover the amount specified therein from the establishment or, as the case may be, the employer by one or more of the modes mentioned below:—

(a) attachment and sale of the movable or immovable property of the establishment or, as the case may be, the employer;



can be treated only as parts of the diocese. For the purpose of assessment, they can be separate entities. But for the purpose of recovery, they will be considered and treated only as constituent parts of a single establishment, namely, Kanyakumari Diocese of CSI. The monies lying in the bank account of the petitioner-institution also belongs to CSI, Kanyakumari Diocese. Therefore, when the first respondent has taken recovery action, it must be construed as taking action only against the establishment concerned.

8.The expression “establishment” has not been defined in Act 19 of 1952. In ***L.N.Gadodia & Sons v. RPFC (2011) 13 SCC 517***, it was argued that only different departments or branches of an establishment can be clubbed together, but not different establishments altogether. The contention was repelled and it was held as follows :

“23.....what is to be noted is that, this is an enabling provision in a welfare enactment. The two Petitioners may not be different departments of one establishment in the strict sense. However, when we notice that they are run by the same family under a common management with common workforce and with financial integrity, they are expected to be treated as branches of one establishment for the purposes of Provident Funds Act. The issue is with respect to the



application of a welfare enactment and the approach has to be as indicated by this Court in *Sayaji Mills Ltd.* (1984 Supp SCC 610). The test has to be the one as laid down in *Associated Cement Company* (AIR 1960 SC 56) which has been explained in *Management of Pratap Press* (AIR 1960 SC 1213)."

The aforesaid decision was followed in ***Shree Vishal Printers Ltd. vs. Fund Commissioner, Jaipur and Ors (2019) 9 SCC 508***. The ratio is that it is impossible to lay down any one test as an absolute and invariable test for all cases. The real purpose of the test would be to find out the true relation between the parts, branches, unit etc., Unity of ownership, unity of management and control, unity of finance, unity of labour, unity of employment and unity of functional integrality are the tests which courts apply. The Hon'ble Supreme Court in the latest judgment stressed the fact that the Act being a beneficial legislation, the approach of the court must be to ensure that liability under the Act is not evaded. I therefore hold that while the petitioner and the seventh respondent can be two separate entities for the purpose of assessment, they are to be treated as constituent parts of a single establishment for the purpose of recovery under Section 8 of the Act. The first respondent rightly adopted such an approach and it cannot be faulted. As already observed, the situation would have been probably different if the writ petitioner is a legal entity. The case-laws



relied on by the learned counsel for the petitioner relate to clubbing for the purpose of assessment and that is why, they may not be useful to decide the issue on hand. For the reasons mentioned above, it is not possible to invoke Section 2(e) of the Act also so as to bring the petitioner's case within the protection set out in the proviso to Section 8B(1) of the Act. CSI, Kanyakumari Diocese is an umbrella organization whose limbs are the petitioner and the seventh respondent. They would constitute a single establishment for the purpose of recovery.

9. At the same time, the first respondent cannot act in a manner so as to cripple the running of the petitioner-institution. The petitioner is running a number of hospitals. It has to cater to the welfare of the patients. It must pay salary to the doctors and other staff. Therefore, the first respondent cannot sweep the petitioner's bank account dry. The first respondent has the power to effect recovery of the dues. But this power must be exercised in a reasonable manner. If a sledge hammer approach is adopted, it will bring the day-to-day running of the institution to halt. The authority must milk the cow not butcher it. A bee or a butterfly gently draws the honey from the flower. It does not pluck it. The authority must adopt a similar approach. The institutions in question are having properties and it is always possible to effect full



recovery of the PF dues. I therefore restrain the first respondent from appropriating more than a sum of Rs.15.00 lakhs per month from the petitioner's bank accounts. The impugned order is interfered with to this limited extent. The first respondent is directed to issue revised proceedings in consonance with the direction given in this writ petition.

10.The writ petition is disposed of accordingly. No costs. Connected miscellaneous petitions are closed.

30.09.2022

Index : Yes / No
Internet : Yes/ No
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To

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Rep.by its Assistant Provident Fund
Commissioner, Sub-regional Office,
65-A, Water Tank Road, Nagercoil,
Kanyakumari District – 629 001.



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G.R.SWAMINATHAN, J.

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