

Form No.J(2)

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Raja Basu Chowdhury

WPA 23310 of 2023

Rajya parshwa Shikshak Samanway Samity & Ors.
Versus
Union of India & Ors.

For the petitioners	:	Mr. Debabrata Saha Roy Mr. Indranath Mitra Mr. Sankha Biswas
For Union of India	:	Mr. Ajhay Choubey Ms. Sunita Sarkar
For the State	:	Mr. Ranjan Saha Ms. Tanzira Mallick
For the respondent No.3.	:	Mr. Anil Kumar Gupta
For the respondent nos. : 6 and 7	:	Mr. L.K. Gupta, Sr.Advocate Mr. Arjun Ray Mukherjee Ms. Saheli Mukherjee
Heard on	:	12 th October, 2023
Judgment on	:	12th October, 2023.

Raja Basu Chowdhury, J:

1. By consent of the parties the matter is taken up for final hearing
on the basis of the documents on record.

2. The present writ petition has been filed, inter alia, challenging the order dated 14th August, 2023, passed by the Secretary, Government of India, Ministry of Labour & Employment.
3. The petitioner no.1 claims to be a registered association of Para Teachers (Primary and Upper Primary) of all over West Bengal and is interested to espouse the cause of para teachers of all over the State of West Bengal.
4. The petitioner nos. 3 to 12 had been appointed as para teachers by the District Project Officer, Sarva Shiksha Mission, Murshidabad, through their respective engagement letters, which are annexed to the writ petition.
5. On the basis of a complaint made by the petitioners, an enquiry under Section 7A of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the said Act) was initiated by the provident fund authorities. The establishment, namely, Paschim Banga Sarva Shiksha Mission now known as Paschim Banga Samagra Shiksha Mission, being the respondent no.6 herein, participated in such enquiry.
6. By an order dated 20th May, 2014, the Assistant Provident Fund Commissioner, R.O., on the basis of enquiry conducted by him under Section 7A of the said Act, had determined applicability of the provisions of the said act insofar as the respondent no.6 is concerned. Despite the provident fund authorities calling upon the respondent nos.6 and 7 to comply with the provisions of the

said Act, by letter dated 7th April, 2016, and respondent nos. 6 and 7 having not acted in terms of such directions, by not depositing the contributions payable by them to the provident fund authorities, the petitioners had instituted a proceeding before this Hon'ble Court, seeking for enforcement of the directions issued by the provident fund authorities. Such application was registered as WPA 11281 of 2017.

7. On contest, by an order dated 17th September, 2019, a Coordinate Bench of this Hon'ble Court by taking note of the order dated 20th May, 2014, had directed the Assistant Provident Fund Commissioner to take consequential steps, consequent upon issuance and their letter dated 7th April, 2016, and accordingly, the writ petition stood disposed of. The respondent no.7 had, however, unsuccessfully sought for review of such order. By an order dated 15th November, 2019 such review stood dismissed.
8. Being aggrieved, the respondent no.7 had filed an intra-court appeal which was registered as MAT 1962 of 2019. On contest, the Division Bench of this Hon'ble Court taking note of the submissions made by the parties was, *inter alia*, pleased to dismiss the said appeal and the connected application by observing as follows:

“ That apart we find there are documents to the effect that the Executive Committee of the appellant organization headed by Chief Secretary, Government of

West Bengal in the annual meeting of February, 2015 approved implementation of Employees Provident Fund & Miscellaneous Provisions Act, 1952 for the benefit of the employees of PBSSM. Thus, we are of the view that the impugned order and direction cannot be interfered with. If, according to the appellant, their establishment is eligible for exemption, such prayer be made before the appropriate authority and as on date exemption have not been granted and the appellant is bound to comply with the provisions of Employees Provident Fund & Miscellaneous Provisions Act, 1952.

Hence, the appeal and the connected application are dismissed. The time for compliance of the order and direction issued by the learned Single Judge is extended by six weeks from today”.

9. The respondent no.7 had, however, sought for leave to challenge the said order passed by the Hon'ble Division Bench, by filing a Special Leave Petition before the Hon'ble Supreme Court of India. By an order dated 2nd November, 2022, the Special Leave Petition which was registered as petition for Special Leave to Appeal (C) 19081/2022 was dismissed. In the interregnum, in terms of the liberty reserved, the respondent nos. 6 and 7 had made a representation dated 25th August, 2022 addressed to the Secretary (L&E) to the Government of India, Ministry of Labour & Employment, inter alia, praying for exempting the said respondents from the provisions of the said Act. Since, such representation was kept pending, at the instance of the

respondent nos. 6 and 7, a Coordinate Bench of this Hon'ble Court on 11th October, 2022 in a writ petition, being WPA 23037 of 2022 was, *inter alia*, pleased to direct the concerned respondents to consider and dispose of the aforesaid representation dated 25th August, 2022 in accordance with law and by passing a reasoned order. Since then, by an order dated 14th August, 2023, the respondent no.2, having found the respondent nos. 6 and 7 to be eligible for exemption from the provisions of the said Act under Section 16(2) of the said Act, during the currency of the three notifications mentioned therein, had declared that all action and notices as well as orders issued by the Regional Office, EPFO, Kolkata, for making the said Act applicable, and securing compliance from the period 1st April, 1999 to 31st March, 2015 be set aside and be declared *ultra vires* and *void ab initio*.

10. Challenging the aforesaid order, the present writ petition has been filed.
11. Mr. Mitra, learned advocate representing the petitioners submits that the issue whether the provisions of the said Act are applicable to the respondent nos. 6 and 7 has already been adjudicated in a proceedings under Section 7A of the said Act. He submits that a Coordinate Bench of this Hon'ble Court had also directed the provident fund authorities to implement the decision taken by them under Section 7A of the said Act. There is no

challenge to the order passed under Section 7A of the said Act. On the contrary, the respondent nos. 6 and 7 had unsuccessfully challenged the direction issued by the learned Single Judge and the Division Bench of this Court by its order dated 8th March, 2022 had refused to interfere with the direction for implementation of the provisions of the said Act, by the provident fund authorities and had consequentially dismissed the appeal. He submits that the Hon'ble Division Bench had clearly given a finding that as on the date of passing of such order there was no exemption granted in favour of the respondent nos. 6 and 7 consequentially the applicability of the provisions of the said Act, cannot be avoided. By referring to the order which is impugned in the present application he submits that the respondent no.2 had exceeded his jurisdiction in setting aside the quasi judicial orders passed under Section 7A of the said Act, by declaring them as ultra vires. It is not within the competence of the respondent no.2 or the Central Government to declare a quasi judicial order as ultra vires. The said direction issued by the respondent no.2 is without jurisdiction and should be set aside. It is still further submitted that no notification as required under Section 16(2) of the said Act, for exempting an establishment, has been published. The respondent no.2 could not have interpreted the previous notifications for extending the grant of exemption in favour of the respondent nos. 6 and 7 since, the same was no

longer within the realm of his consideration, as such issue had been finally put to rest by the judgment delivered by the Division Bench of this Hon'ble Court and the subsequent dismissal of Special Leave Petition.

12. *Per contra*, Mr. Gupta, learned senior advocate representing the respondent nos. 6 and 7 submits that the issue whether the respondent nos. 6 and 7 were entitled to exemption had never been closed. While dismissing the appeal by its order dated 8th March, 2022, the Hon'ble Division Bench did not close the issue, on the contrary reserved the liberty in favour of the respondent no.7 for applying before the appropriate authority, seeking exemption under the provisions of the said Act. Admittedly, since, the notification in question was not before the learned Single Judge, the Division Bench chose not to go into the same and had left such issue open for being considered in the manner provided under the said Act. He submits that the order dated 20th May, 2014 could not have been challenged by the respondent nos. 6 and 7 by preferring an appeal under Section 7(I) of the said Act, by reasons of the impediment cast in the Employees' Provident Funds Appellate Tribunal (Procedure) Rules, 1997. Since, the authority adjudicating the proceeding under Section 7A of the said Act, did not decide on the quantum of the contributions payable by the respondent nos. 6 and 7, no appeal in that regard was maintainable.

13. He submits that it is within the realm of the authority of the respondent no.2, to grant exemption under Section 16(2) of the said Act. Admittedly, the notifications which were considered by the respondent no.2 in no uncertain terms entitled the respondent nos. 6 and 7 to grant of exemption. The provident fund authorities dishonestly ignored the aforesaid notifications. The aforesaid notifications, if, considered in its proper perspective, would have entitled the respondent nos. 6 and 7 to the grant of exemption at the first instance. Having regard to the aforesaid, he submits that there is no irregularity on the part of the respondent no.2 in declaring that the respondent nos. 6 and 7 to be eligible for exemption from the provisions of the said Act, under Section 16(2) thereof, during the currency of the aforesaid three notifications. He still further submits that the respondent no.2 did not commit any irregularity in directing that all action and notices as well as orders issued by the Regional Office, EPFO, Kolkata for making the provisions of the said Act applicable, and for securing compliance the period 1st April, 1999 to 31st March, 2015, as *ultra vires* and in setting aside the same. He also refers to two separate orders dated 26th July, 2023 and 30th August, 2023 and submits that a Division Bench of this Hon'ble Court, though in a different appeal, has taken note of the order dated 14th August, 2023 passed by the respondent no.2. He, however, submits that the issues involved in this

petition regarding challenge to the said order was not before the Hon'ble Division Bench. By placing reliance on the judgment delivered by the Hon'ble Supreme Court in the case of ***P. J. Irani v. State of Madras & Anr.***, reported in **AIR 1961 SC 1731**, he submits that ordinarily, no challenge to an order granting exemption can be entertained. Only in exceptional circumstances can an order of this nature be interfered with by a Court, exercising the powers of judicial review. In the instant case, admittedly, no such case has been made out by the petitioners. It is still further submitted that the notifications which were relied on by the respondent no.2 to grant exemption under Section 16(2) of the said Act, are not under challenge. In the aforesaid backdrop, he submits that the writ petition deserves to be dismissed with costs.

14. Mr. Gupta, learned advocate representing the provident fund authorities submits that the authority is bound by the direction issued by the respondent no.2. He, however, submits that the order passed on 20th May, 2014, under Section 7A of the said Act was obviously an appealable order and there was no impediment in challenging the same. In any event, he submits that the order passed by the respondent no.2 is a reasoned order and no case for interference has been made out. Mr. Choubey and Mr. Saha learned advocates enter appearance for the Union of India and for the State respectively.

15. Heard the learned advocates appearing for the respective parties and considered the materials on record. Admittedly, in this case it appears that on the basis of a complaint made by some of the petitioners, an enquiry under Section 7A of the said Act, was conducted by the provident fund authorities. On the basis of such enquiry by an order dated 20th May, 2014 the Assistant Provident Fund Commissioner had determined the applicability of the provisions of the said Act, insofar as the respondent nos. 6 is concerned. Records would reveal that the petitioners had sought for implementation of the direction issued by the Assistant Provident Fund Commissioner by filing a writ petition, being WPA 11281 of 2017. By an order dated 17th September, 2019, a Coordinate Bench of this Hon'ble Court was, *inter alia*, pleased to dispose of the said petition by observing as follows:-

“In the light of the above, I direct the Assistant Provident Fund Commissioner, being the respondent No.5 to immediately, preferably within a month from date, take cosequential steps in accordance his own letter dated April 07, 2016.

It is made clear tht the Employees’ Provident Fund and Miscellaneous Provisions Act, 1952 contains provisions for recovery of the provident fund and the provisions should be adhered to by the Provident Fund Authorities as per law.

With the aforesaid observations, WP 11281(W) of 2017 stands disposed of”.

16. It is also a matter of record that although, a review application was filed by the respondent no.7 seeking review of the order dated 17th September, 2019, the said application was dismissed by an order dated 15th November, 2019. Subsequently, however, being aggrieved with the aforesaid direction, the respondent no.7 had preferred an intra-Court appeal which was registered as MAT 1962 of 2019. The Division Bench of this Hon'ble Court taking note of the submissions made by the parties was pleased to dismiss the said appeal. The respondent no.7 had then applied before the Hon'ble Supreme Court, seeking special leave to prefer an appeal, such special leave petition was dismissed by the Hon'ble Supreme Court by its order dated 2nd November, 2022.
17. I find that the respondent nos. 6 and 7 in terms of the liberty reserved in their favour by the Hon'ble Division Bench vide order dated 8th March, 2022, had made a representation before the respondent no.2 on 25th August, 2022. However, since, such representation was kept pending, the respondent nos. 6 and 7 had filed a writ petition before this Hon'ble Court. At the instance of the respondent nos. 6 and 7, the Coordinate Bench of this Court by an order dated 11th October, 2022 was, *inter alia*, pleased to direct the concerned respondent to dispose of the said representation dated 25th August, 2022 in accordance with law by passing a reasoned order. The respondent no.2 has since disposed of the representation by passing a reasoned order dated

14th August, 2023. As would appear from the aforesaid order the respondent no.2 by taking note of the three several notifications, relating to grant of exemption, to certain class of establishments from the operation of the said Act, for the period upto 31st March, 2015 with effect from 1st April, 2010 was pleased to observe as follows:-

“Whereas, it is apparent that the establishment was eligible for exemption from the provisions of the Act under section 16(2) during the currency of the three notifications mentioned above. Yet, the said benefit has been denied to it even though the fact that the establishment being a registered ‘ Society’ & wholly funded through grants-in-aid by the Central Government and State Government was in the knowledge of the 7A authority as is evident from the said order dated 20.05.2014.”

18. Consequent upon making such declaration the respondent no.2 had also proceeded to hold and declare all actions and notices as well as orders issued by the Regional Office, EPFO, Kolkata for making the Act applicable and securing compliance from the period 1st April, 1999 to 31st March, 2015 are set aside as these are *ultra vires* and *void ab initio*.

19. Incidentally, the aforesaid order has not been notified. I find that it has been strenuously argued on behalf of the respondent nos. 6 and 7 that in terms of the liberty reserved in their favour by the Hon’ble Division Bench, they were not only competent to

apply for grant of exemption but the issue whether the respondent nos. 6 and 7 were exempted from the provisions of the said Act, was kept open to be decided by the appropriate authority. Having regard to the aforesaid, it has been also submitted that there is no irregularity on the part of the respondent no.2 in issuing consequential direction and liability of the respondent nos. 6 and 7 under the provisions of the said Act, commences from the date of passing of the aforesaid order in terms of the direction passed therein. To appreciate the aforesaid submission, it would be relevant to consider not only the order passed by the Division Bench but the provisions of Section 16(2) of the said Act. Admittedly, in this case, I find that the Hon'ble Division Bench while considering the appeal filed by the respondent no.2 had categorically and in no uncertain terms returned the finding that as on the date of passing such order no exemption had been granted in favour of the appellant. However, at the same time, liberty was granted to the appellant to apply for grant of exemption. I find that Section 16(2) of the said Act, confers authority on the Central Government as regards grant of exemption. The said provision is extracted hereinbelow:-

“16(2). If the Central Government is of opinion that having regard to the financial position of any class of establishment or other circumstances of the case, it is necessary or expedient so to do, it may, by notification in

the Official Gazette, and subject to such conditions as may be specified in the notification, exempt whether prospectively or retrospectively that class of establishments from the operation of this Act for such period as may be specified in the notification.”

20. Admittedly, in this case, no such notification as contemplated under Section 16(2) of the said Act, has been published. On the contrary, I find that the respondent no.2 by interpreting the previous notifications had declared the respondent nos. 6 and 7 are eligible for exemption from the provisions of the said Act, during the currency of the three notifications mentioned therein.
21. As to whether the respondent nos. 6 and 7 are eligible for grant of exemption in the light of the notifications already published, in my view, was no longer open for the respondent no.2 to interpret once, the Hon’ble Division Bench had returned the finding that as on the date of passing of the order there was no exemption granted in favour of the respondent nos. 6 and 7. The challenge to said order by the respondent nos. 6 and 7 failed as the Special Leave Petition stood dismissed by an order dated 2nd November, 2022.
22. Although, Mr. Gupta, learned senior advocate by placing reliance on the judgment in the case of **P.J. Irani (supra)** has contended that an exemption of the nature can only be questioned when the eventualities identified therein are satisfied

and the petitioner having failed to make any case, to come within the parameters identified in the aforesaid judgment, no interference is called for, I am of the view that since, the respondent no.2 at the first instance did not have the jurisdiction to consider the issue which was already decided by the Division Bench, the finding returned by the respondent no.2 is without jurisdiction. The aforesaid notifications were admittedly before the Hon'ble Division Bench and in consideration thereof, the Hon'ble Division Bench rendered the finding that there was no exemption subsisting on the respondent nos. 6 and 7 as on the date of passing of the order and the said respondents are bound to comply with the provisions of the said Act. Having regard to the same, I am of the view that the interpretation given by the respondent no.2 seeks to overreach a judicial pronouncement. The same is not permissible. The judgment relied on by Mr. Gupta, does not assist the respondent nos. 6 and 7. It is well settled that a judgment is an authority for what it decides, a slight variation in the facts may alter the final outcome.

23. In my view, the respondent no.2 in terms of the liberty reserved by the Hon'ble Division Bench could have granted an exemption to the petitioner only in the mode and manner provided in Section 16(2) of the said Act. Admittedly, no notification has been published exempting the respondent nos. 6 and 7 from the provisions of the said Act. In view thereof, the

order passed by the respondent no.2 cannot be sustained, the same is accordingly set aside and quashed.

24. With the aforesaid observations/direction the writ application, stands disposed of.

25. There shall, however, be no order as to costs.

26. Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of necessary formalities.

(Raja Basu Chowdhury, J.)

sb.