IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **01.06.2023**

CORAM :
**THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD**

**Writ Petition No.2016 of 2005**
**and W.P.M.P.No.2265 of 2005**

The Secretary,
M/s. Madrsa – Mazahirul Uloom,
Chettichavadi Post,
Salem – 12. ... Petitioner

Vs.

1.Assistant Provident Fund Commissioner (Compl),
Employees Provident Fund Organisation
Sub Regional Office,
Sri Jayalakshmi Plaza, Anna Salai,
Swarnapuri, Selam – 4.

2.Regional Provident Fund Commissioner,
Employees Provident Fund Organization,
Sub Regional Office,
Salem – 1.

(R2- impleaded and prayer amended as per order dated 29.07.2011 by SNJ in WPMP.No.421 of 2010 and 431 of 2010 in W.P.No.2016 of 2005)

… Respondents

Writ Petition filed under Article 226 of Constitution of India, praying for issuance of Writ of Certiorarified Mandamus calling for the records on the file of the 2nd respondent in Proc.No.TN/14687/ENF/SRO-SLM/ dated 26.12.1995 and that of 1st respondent in Proc No TN/SLM/SRO/ENF/14687/SAL-I/04 and dated 21.12.2004 and quashes the same as illegal, incompetent and without jurisdiction and further directs the respondents not to initiate any action under Act 19/52.

For Petitioner : Mr.P.Mallikarjun
for M/s.V.Srimathi

For Respondents 1 & 2 : Mr.M.Palanimuthu

**ORDER**

The relief sought by the petitioner in this writ petition is to call for the records on the file of the 2nd respondent in Proc.No.TN/14687/ENF/SRO-SLM/ dated 26.12.1995 and that of 1st respondent in Proc No TN/SLM/SRO/ENF/14687/SAL-I/04 and dated 21.12.2004 and quashes the same as illegal, incompetent and without jurisdiction and further directs the respondents not to initiate any action under Act 19/52.

2. The learned counsel for the petitioner submitted that the petitioner is a Madarasa, which is registered under the Society Registration Act,1860. The object of the society is to preach, impart, propagate and infuse religious faith in Holy Quran and incidental Islamic laws. Around 13 teaching and 5

non-teaching members are engaged for the purpose and hardly 250 children were studying in the Madarasa. The institution survives on the donation from public and does no industrial of trading activities. The teachers conversant with Mohammedan laws and scriptures render free service and are only compensated by the institution minimally. The said Madarasa is not an educational institution like a regular college or school. It is mainly intended to feed the ignorant young children and men of religious values and help the poor Muslim boys to understand the imbibe and practice and dictates of Quaran.

2. The learned counsel further submitted that a notice was issued by the first respondent attempting to extract money under the guise of implementation of a statutory demand, which was resisted by the petitioner on the ground that the institution is not amenable to the jurisdiction of the first respondent. Subsequently, the first respondent issued a show cause notice dated 18.02.2003, demanding to remit a sum of Rs.2.19 Lakhs towards the Provident Fund. However, on Nil.11.2003, the respondents herein had demanded a sum of Rs.12.46 Lakhs towards contribution and failed to

disclose the basis for the amount arrived at. Thereafter, the respondents issued a recovery notice dated 02.05.1994, against which, the petitioner filed a petition under section 19-A of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952, before the Central Government and the said petition was remanded back to the second respondent to consider the matter afresh and directed to decide the same, within a period of two months from the date of receipt of a copy of that order. However, before the matter was re-determined as per the order of the Central Government, the second respondent re-determined the matter and passed order in Proc.No.TN/14687/ENF/SRO-SLM/ dated 26.12.1995.

3. The learned counsel for the petitioner contended that challenging the recovery notice dated 02.05.1994 in No.B1/TN/CBE/Eng.14687/Sal.I/94, the petitioner has filed a writ petition in W.P.No.9629 of 1994 and this Court quashed the notice dated 02.05.1994 and allowed the writ petition on 02.12.2003. Thereafter, the first respondent sent a letter dated 04.11.2004 to the petitioner for enquiry and to produce the relevant documents to determine the due amount and the petitioner has appeared before the respondents and

submitted a representation, seeking exemption under Section 16(2) of the Act as the petitioner institution is a charitable society.

4. The learned counsel for the petitioner further contended that the first respondent issued a notice in TN/SLM/SRO/ENF/14687/SAL-I/04 dated 21.12.2004 stating that the coverage issue has already been decided by the respondents, moreover, this Court has quashed only the recovery notice dated 02.05.1994 and ordered that it was open to the authorities to recover the dues in accordance with law. Hence, the first respondent has not considered the petitioner's claim for exclusion/exemption from the Act. Challenging the aforesaid notices issued by the second respondent in Proc.No.TN/14687/ENF/SRO-SLM/ dated 26.12.1995 and the first respondent in TN/SLM/SRO/ENF/14687/SAL-I/04 dated 21.12.2004, the petitioner has filed this writ petition.

5. The learned counsel appearing for the respondents has filed a counter affidavit dated 12.12.2022 and submitted that the petitioner has been covered under the Provisions of the Employees' Provident Funds and

Miscellaneous Provisions Act, 1952 with effect from 01.08.1982. The establishment was covered under Section 1(3)(b) of the Act, under the Scheduled Head "Educational Institution as College". The establishment was directed to implement the Provisions of the Act and the Schemes framed thereunder from the date of coverage, i.e., 01.08.1982. Despite repeated requests and several reminders, the establishment had failed to comply with the statutory obligations.

6. The learned counsel appearing for the respondents further submitted that inquiry was initiated and after affording several opportunities, proceedings dated 04.09.1991 was issued to determine the dues for the period from August 1982 to May 1991. As no amount was forthcoming, recovery proceedings were also initiated. Subsequently, as the establishment defaulted in payment of Provident Fund dues for the further period, dues for the period from June 1991 to September 1992 were also determined by proceedings dated 19.11.1991. Aggrieved by this, the establishment filed an appeal under section 19-A of the Act, before the Central Government. The Government has remanded back the case to the Employees Provident Fund Organisation

with a direction to start afresh proceedings under Section 7A of the Act giving reasonable opportunity to the petitioner to represent the case. Accordingly, a fresh inquiry was conducted and the coverage of the establishment was upheld vide proceedings dated 26.12.1995. In the meantime, the Recovery Officer had issued Recovery Proceedings dated 02.05.1994. In this regard, the establishment had filed a Writ Petition No.9629 of 1994 and obtained Interim Stay. While disposing off the Writ Petition, by order dated 02.12.2003, this Hon'ble Court had quashed the Recovery Notice dated 02.05.1994, as the issue of coverage was not finalized stage. However, the Court has not passed any orders on the proceedings dated 26.12.1995, but further held that "It is open to the Authorities to recover the dues in accordance with law".

7. The learned counsel appearing for the respondents further contended that the issue of coverage was finalised by proceedings dated 26.12.1995, a Notice dated 21.12.2004, directing the employer to implement the Provisions of the Act, and further directing him to appear before the Assessing Officer for verification of records and to determine the dues for the further period of

default was issued. Aggrieved, the employer filed the Writ Petition and this Court has granted Interim Stay by order dated 27.01.2005.

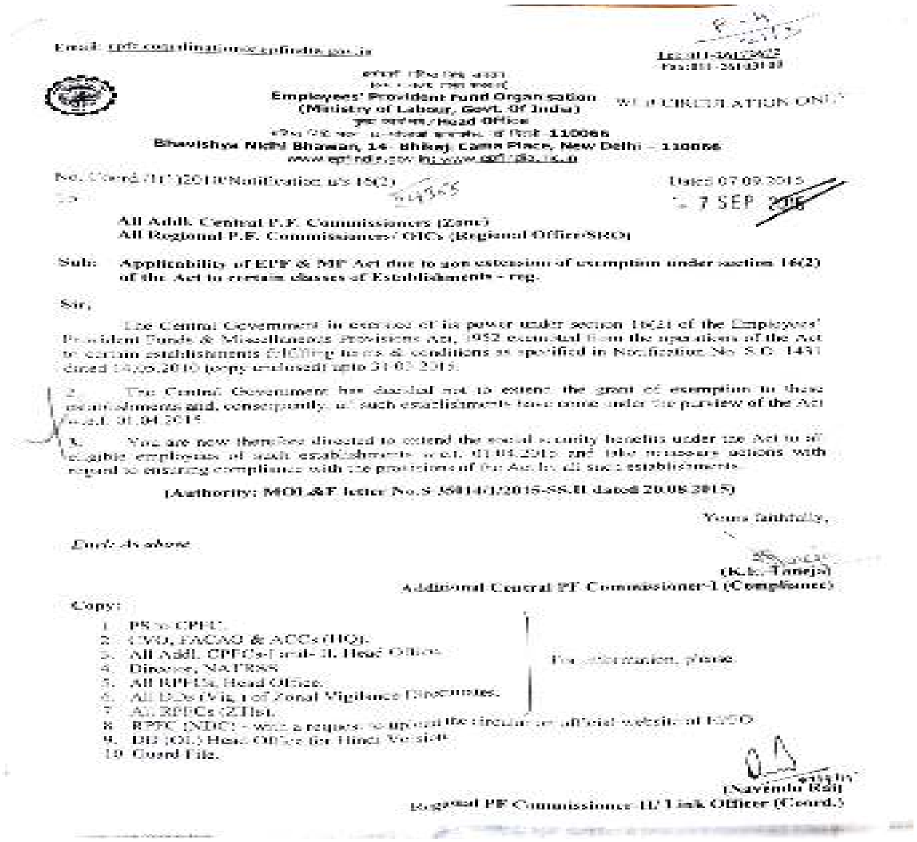
8. The learned counsel appearing for the respondents further submitted that the petitioner initially contended that their establishment is a Charitable Educational Institution. Subsequently, they claimed the establishment to be a Registered Society and finally a Religious Place and an Orphanage. Therefore, it is seen that the employer has been making contradicting statements all along. However, as per the records maintained by the establishment and verified by the Enforcement Officer, the establishment has been paying salaries to the Staff Members and they have also availed Advances, as per their book entries an Balance Sheet. These aspects have been verified and these facts have been explicitly expressed in the proceedings dated 26.12.1995.

9. The learned counsel appearing for the respondents further contended that this Court, while disposing off this Writ Petition in W.P.No.9629 of 1994, by order dated 02.12.2003 had only quashed the Recovery Notice dated

02.05.1994. However, the Court had not passed any order regarding the applicability or any direction contradictory to the proceedings dated 26.12.1995, upholding the coverage. Therefore, it is very clear that the petitioner establishment is liable to be covered under the Employees Provident Funds and Miscellaneous Provisions Act, 1952. Thus, they are also liable to remit the statutory dues, as determined earlier further periods up -to-date. Also, the respondent is right in initiating Recovery proceedings to recover the statutory dues and the applicability of the Act was finalized vide the proceedings dated 26.12.1995, there is no question of any dispute.

10. The learned counsel appearing for the respondents further submitted that the financial reservoir for the distribution of benefits is filed by the employer, collecting by deducting from the worker's wages, completing it with his own equal share and duly making over the gross amount to the Fund. If the employer neglects to remit or diverts the moneys, for alien purposes the Fund gets dry and the retirees are denied the meagre support when they most need. This prospect of destitution demoralises the poor working class and frustrates the hopes of the community itself.

11. The learned counsel appearing for the respondents drew the attention of this Court to the letter dated 07.09.2015 of the Employees' Provident Fund Organisation, New Delhi and the relevant portion of the same is extracted hereunder:



Email: [illegible]

Tel: [illegible]
Fax: [illegible]

[illegible]
Employees' Provident Fund Organisation
(Ministry of Labour, Govt. Of India)
[illegible] / Head Office
[illegible] 110066
Bhavishya Nidhi Bhawan, 14- Bhikaji Cama Place, New Delhi – 110066
www.epfindia.gov.in [illegible]

WEB CIRCULATION ONLY

No. Coord./11(1)2010/Notification u/s 16(2)

Dated 07.09.2015

7 SEP 2015

To

All Addl. Central P.F. Commissioners (Zone)
All Regional P.F. Commissioners/ OICs (Regional Office/SRO)

Sub: Applicability of EPF & MP Act due to non extension of exemption under section 16(2) of the Act to certain classes of Establishments – reg.

Sir,

The Central Government in exercise of its power under section 16(2) of the Employees' Provident Funds & Miscellaneous Provisions Act, 1952 exempted from the operations of the Act to certain establishments fulfilling terms & conditions as specified in Notification No. S.O. 1431 dated [illegible].2010 (copy enclosed) upto 31.03.2015.

2. The Central Government has decided not to extend the grant of exemption to these establishments and, consequently, all such establishments have come under the purview of the Act w.e.f. 01.04.2015.

3. You are now therefore directed to extend the social security benefits under the Act to all eligible employees of such establishments w.e.f. 01.04.2015 and take necessary actions with regard to ensuring compliance with the provisions of the Act by all such establishments.

(Authority: MOL&E letter No.S [illegible]/2015-SS.II dated 20.08.2015)

Yours faithfully,

Encl: As above

(K.K. Taneja)
Additional Central PF Commissioner-1 (Compliance)

Copy:

1. PS to CPFC.
2. CVO, FA&CAO & ACCs (HQ).
3. All Addl. CPFCs [illegible], Head Office.
4. Director, NATRSS
5. All RPFCs, Head Office.
6. All DDs (Vig.) of Zonal Vigilance Directorates.
7. All RPFCs (ZTIs).
8. RPFC (NDC) – with a request to upload the circular on official website of EPFO
9. DD (OL) Head Office for Hindi Version
10. Guard File.

For information, please.

(Navendu Rai)
Regional PF Commissioner-II/ Link Officer (Coord.)

12. The learned counsel appearing for the respondents further drew the attention of this Court to the notification dated dated May 23 – May 29,

2010, The Gazette of India. For better appreciation, the relevant portion is extracted hereunder:

> *"Provided that if such class of establishments run any university, any college, any school, any scientific institution, any institution in which research education, imparting knowledge or training is carried on against charges or fees from the students, or run any hospital, nursing home or clinic in which any medical treatment or procedure is carried on against charges or fees from the patients, such activity shall not be exempted from the operation of the first mentioned Act".*

13. Heard the learned counsel on either side and perused the materials available on record.

14. The petitioner is a Madarasa, which is registered under the Society Registration Act,1860. The object of the society is to preach, impart, propagate and infuse religious faith in Holy Quran and incidental Islamic laws. Around 13 teaching and 5 non-teaching members are engaged for the purpose and hardly 250 children were studying in the Madarasa. The institution survives on the donation from public and does no industrial of trading activities. The said Madarasa is not an educational institution like a

regular college or school. It is mainly intended to feed the ignorant young children and men of religious values and help the poor Muslim boys to understand the imbibe and practice and dictates of Quaran.

15. **On perusal of records, it is found that the petitioner viz., M/s. Madrasa – I – Mazhirul Ullom has been covered under the provisions of Employees Provident Fund and Miscellaneous Provisions Act, 1952 with effect from 01.08.1982 and the establishment was covered under Section 1(3)(b) of the Act, under the Scheduled Head "Educational Institution as College". The establishment was directed to implement the Provisions of the Act and the Schemes framed thereunder from the date of coverage, i.e., 01.08.1982, but the same was not challenged by the petitioner till date.**

16. The petitioner initially claimed that their establishment is a Charitable Educational Institution. Subsequently, they claimed the establishment to be a Registered Society and finally a Religious Place and an

Orphanage. **However, as per the records maintained by the establishment and verified by the Enforcement Officer, the establishment has been paying salaries to the staff members and they have also availed advances, as per their book records and balance sheet. These aspects has been verified and these facts have been explicitly expressed in the proceedings dated 26.12.1995.**

17. This Court, while passing orders in W.P.No.9629 of 2014 dated 02.12.2003 has not passed any orders regarding applicability of the proceedings dated 26.12.1995, upholding the coverage. Therefore, it is crystal clear and evident that the petitioner/establishment is covered under the Employees' Provident Fund and Miscellaneous Provisions Act, 1952.

18. In view of the above facts and circumstances of the case, this Court is of the considered view that the order passed by the 2nd respondent in Proc.No.TN/14687/ENF/SRO-SLM/ dated 26.12.1995 and the 1st respondent in Proc.No.TN/SLM/SRO/ENF/14687/SAL-I/04 dated 21.12.2004 are to be confirmed.

19. In the result, this writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

**01.06.2023**

vm
Index : Yes/No
Speaking Order : Yes/No

To:

1.Assistant Provident Fund Commissioner (Compl),
Employees Provident Fund Organisation
Sub Regional Office,
Sri Jayalakshmi Plaza, Anna Salai,
Swarnapuri, Selam – 4.

2.Regional Provident Fund Commissioner,
Employees Provident Fund Organization,
Sub Regional Office,
Salem – 1.

**J.SATHYA NARAYANA PRASAD,J.**

vm

**W.P.No.2016 of 2005**

**01.06.2023**