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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

<i>Judgment Reserved On</i>	<i>Judgment Pronounced On</i>
12.01.2023	12.07.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)Nos. 5554 of 2013, 3710 and 8414 of 2019

and

W.M.P.(MD)Nos. 2915 & 6607 of 2019

W.P.(MD)No. 5554 of 2013

Sree Visalam Chit Fund Limited,
Represented by its Managing Director,
Mr.AR.Viswanathan.

... Petitioner

Vs.

1. Union of India,
Represented by its
Secretary to Government,
Ministry of Labour,
New Delhi.
2. The Regional Provident Fund Commissioner,
Sub-Regional Office of Employees Provident Fund,
Lady Doak College Road,
Chokkukulam,
Madurai – 625 002.



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3. The Assistant Provident Fund Commissioner,
Sub-Regional Office of Employees Provident Fund,
Lady Doak College Road,
Chokkukulam,
Madurai – 625 002.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a ***Writ of Certiorari***, to call for the records of the 3rd respondent impugned communication bearing proceedings No. TN/ 17048/ Enf(Exem.)/ Annual Report / RO/MDU/2013, dated 04.03.2013 made in so far as the 1st paragraph of the said communication.

For Petitioner : Mr.Lakshmi Narayanan, for
Mr.Abinav Parthasarathy

For R-1 : Mr.S.Jeyasingh

For R-2 & 3 : Mr.K.Murali Sankar

W.P.(MD)Nos. 3710 & 8414 of 2019

Sree Visalam Chit Fund Limited,
Represented by its Managing Director,
Mr.AR.Viswanathan.

... ***Petitioner in both
Writ Petitions***

Vs.

1. The Regional Provident Fund Commissioner,
Sub-Regional Office of Employees Provident Fund,
Lady Doak College Road,
Chokkukulam,
Madurai – 625 002.



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2. The Assistant Provident Fund Commissioner,
Sub-Regional Office of Employees Provident Fund,
Lady Doak College Road,
Chokkukulam,
Madurai – 625 002.

***... Respondents in both
Writ Petitions***

PRAYER in W.P(MD)No. 3710 of 2019: Writ Petition filed under Article 226 of the Constitution of India for issuance of ***Writ of Certiorari***, calling for the records of the 1st respondent, vide its proceedings bearing No.MD/MDU/17048/Exem (Enf)/2019, dated 12.02.2019 and quash the same.

PRAYER in WP(MD). 8414 of 2019 : Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a ***writ of Certiorari*** calling for records of the 2nd respondent vide its show cause notice bearing No. D/TN/17048/Enf(Exem)/ Annual Report/RO/MDU/ 2019, dated 25.03.2019.

For Petitioner : Mr.Lakshmi Narayanan, for
Mr.Abinav Parthasarathy

For R-1 & 2 : Mr.K.Murali Sankar

COMMON ORDER

W.P(MD)No. 5554 of 2013 has been filed for ***Writ of Certiorari***, to quash the impugned communication, dated 04.03.2013. The ***W.P.(MD). 3710 of***



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2019 has been filed for Writ of Certiorari, to quash the impugned proceedings, dated 12.02.2019. The *W.P.(MD)No.8414 of 2019* has been filed for *Writ of Certiorari* to quash the show cause notice, dated 25.03.2019.

2. The issues involved in these Writ Petitions are same and connected to each other and hence all the writ petitions are taken up together and this common order is passed.

3. The brief facts as stated in the affidavit is that the petitioner is a registered company under the Provisions of Indian Companies Act 1956 and carrying on “**Chit Fund**” business in consonance with the objects mentioned in the Memorandum of Association and Articles of Association of the Company and successfully running for the past 70 years. The Chit Fund business is governed by the provisions of Chit Funds Act, 1982 and the petitioner is not carrying on any other activity except the one permitted under the provisions of Chit Funds Act. To be more specific the petitioner is not lending money or not doing any financial transactions with a view to earn interest and hence the relationship between the “Foreman” and the “Subscriber” is not that of a debtor or creditor. The petitioner's



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company has 43 branches and at present 243 employees are working and are eligible for Provident Fund (subsequently reduced to 32 branches 214 employees). The petitioner's company has implemented its own Provident Fund Scheme, in the year 1965 itself and contributing 12% of the salary towards employer's contribution and 12% contribution as that of their employees. The petitioner's company has taken this welfare measure even prior to the introduction of Employees Provident Fund and Miscellaneous Provisions Act, which came into force only in the year 1971. The contribution amount is transferred to a Trust formed in the name and style of "Sri Visalam Chit Fund Limited Employees' Provident Fund Trust'. The Trust is duly approved by the Income Tax Department and considering the proper function of the scheme the Provident Fund Authorities have granted necessary exemption as well the petitioner's company is disbursing without any default.

4. Originally, the petitioner is not aware of the Notification No. GSR 1458, dated 18.11.1978 treating the petitioner company as a financial establishment by the Provident Fund Department. When the respondents issued a



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letter, dated 07.09.1983, the petitioner has submitted an explanation stating that the petitioner is not engaged in the activities of borrowing, lending, advancing and dealing with other monetary transactions with a view of earn interest. But the 2nd respondent insisted to pay the contribution on wrong interpretation of the notification. In order to avoid harassment the petitioner applied for exemption from EPF Act including Employees Deposit Linked Insurance Scheme (in short EDLI scheme). Initially the PF officials without forwarding the application to 1st respondent refused to grant exemption, then the 2nd respondent sent a communication stating that the exemption application would be considered only for the period from 01.02.1983 and it will not be considered from 01.01.1979. Hence, the petitioner has filed a writ petition in W.P.No.6170 of 1985 and this Court dismissed the writ petition with direction to substantiate the compliance for conditions of grant of exemption before the authorities. Again, the respondents have declined to consider the petitioner's scheme for exemption and insisted for implementation of EDLI scheme.



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5. Again the petitioner approached this Court in W.P.No.9911/1985 and the same was dismissed, aggrieved over the same writ appeal in W.A.No.848 of 1987 was filed. At the time of hearing of the writ appeal the respondents have represented that exemption application has been forwarded to the 1st respondent and consequently writ appeal was also dismissed. Again, on an erroneous belief, the petitioner remitted the inspection charges alone under section 17(3) (A) (a) of the EPF Act, for the period from 01.02.1983 to 31.03.1985 and also for subsequent periods upto 31.03.1990. On receipt of the charges the 2nd respondent has issued notice on 27.08.1990 and directed to comply with certain details mentioned in the said notice.

6. The contention of the petitioner is that the exemption application itself was filed on an erroneous belief that the Notification No.1458, dated 18.11.1978 making the EPF Act applicable to the financing establishment, is applicable to the petitioner's Chit Fund company also. This Court while considering the effect of the said notification, dated 18.11.1978 in a writ petition filed by Chit Fund Companies, it is held that the chit fund company is not a



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financial establishment and hence the said notification is not applicable to the Chit Fund companies, which is reported in 1989 (1) LW Page No.291. Even though, the provisions of the Act, are held not applicable to a Chit Fund business, the petitioner is still following the principles of EPF Act by making contributions under Employees Provident Fund and the Pension Fund scheme without any demur.

7. Thereafter, in the light of the principles enunciated in the above Judgment, on legal advice the petitioner again approached this Court by way of filing writ petition in W.P(MD)No.18432 of 1990, challenging the notice, dated 27.08.1990 issued in connection with EDLI scheme. This Court dismissed the writ petition on 25.11.1998 with a direction to file an application for exemption and further directed the authorities to consider the exemption application in the light of the Judgment reported in 1989 1 LW pg.291. This Court further granted liberty to the petitioners to raise all contentions and objections before the authorities and also directed the authorities to consider and pass order on or before 30.06.1999. The petitioner has preferred an appeal in W.A.No.1306 of



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1999 and the Hon'ble Division Bench of this Court, vide order, dated 19.07.2000 confirmed the Order, dated 25.09.1998. However, further observed in paragraph Nos.12 & 13 that the writ petition is premature.

8. Based on the order, dated 19.07.2000 passed in W.A.No.1306 of 1999 the petitioner has also submitted a detailed objection dated 19.08.2000 to the respondents herein and requested the respondents to drop all further proceedings and refund the inspection charges paid in respect of EDLI scheme alone. The 3rd respondent acknowledged the pendency of the representation dated 19.08.2000 in its communication dated 23.11.2001, but wanted the petitioner company to give a declaration to the effect that the employer will not claim the Employees' Pension Fund contribution and the inspection charges paid, if the case is decided in favour of the petitioner while settling the claim of one A.A.Alagappan. In fact the petitioner has been forwarding such declaration to the 3rd respondent as and when the claim is made for settlement of EPF or Pension Fund amounts.



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9. The 3rd respondent by a communication dated 27.01.2010 informed the petitioner that even though the petitioner establishment has implemented EPF scheme, 1952 and EPS 1995 and but the EDLI scheme 1976 has not been implemented by the petitioner.

10. The petitioner again submitted a reply, dated 10.02.2010 explaining the query raised by the respondents for not implementing EDLI. Even in the observation made in the inspection register on 16.12.2010, a suitable reply, dated 23.12.2010 was submitted by the petitioner. The petitioner has also mentioned about the pendency of its representation, dated 19.08.2000, made in response to the observations of the inspection squad made on 29.07.2011. In the communication, it is stated that the petitioner establishment is not complied with EDLI scheme for a long time and no exemption has been obtained and therefore, the petitioner is liable to contribute EDLI, however in the same paragraph the 3rd respondent has held that non contribution towards EDLI attracts cancellation of the exemption given to EPF and EPS schemes. The respondents without considering the representation dated 19.08.2000 as per the direction of the



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Division Bench order dated 19.07.2000 in W.A.No.1036 of 1999 has issued the impugned communication dated 04.03.2013 which is in gross violation of principles of natural justice. The petitioner has been following the scheme in the place of EDLI scheme, by way of an arrangement with LIC beneficial to its employees in case of death during the period of service and the petitioner is paying the premier amounts in respect of those LIC policies without making any deduction from the salary of the employees.

11. The petitioner has submitted explanation vide letter, dated 18.03.2013 reiterating his objections in the light of principles laid down in 1989 (1) LW 291, but the respondent ignored the explanation. Hence, aggrieved over the said communication, dated 04.03.2013, the writ petition in W.P.(MD)No. 5554 of 2013 is filed.

12. Pending writ petition, the respondents have issued summons, dated 07.04.2014 directing the petitioner to appear for enquiry to be conducted on 22.04.2014. Further stated that the petitioner's application dated 19.08.2000 for



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granting exemption, was disposed, but the respondents have not granted any opportunity of personal hearing before disposing the same. Hence the petitioner has submitted a reply, dated 16.04.2014 for the summons dated 07.04.2014 explaining the pendency of W.P(MD)No.5554 of 2013 and also requested to defer the hearing. Again another notice dated 21.06.2017 was issued directing to attend the enquiry on 04.07.2017 and the letter also shows surcharge levy of Rs.1,14,101/- was imposed on the ground that the petitioner has not made investments for the period from 2001-2002 to 2015-2016. The petitioner has submitted a detailed reply, dated 15.07.2017 explaining the EDLI would not be applicable to the petitioner company. On 20.07.2017 the 1st respondent heard the petitioner company and has passed an order, dated 19.09.2017, directing the petitioner to pay the surcharge amount Rs.1,14,101/-.

13. Pursuant to the order the respondent issued attachment notice to the Bank, wherein the petitioner is holding its account and appropriated the amount and the said amount is still with the respondent. Against the said notice dated 21.06.2017 and order dated 19.09.2017, the petitioner had filed W.P.



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(MD)No.20347 of 2017 and W.P(MD)No.20361 of 2017 and the said writ petitions were disposed of on 02.03.2018, directing to consider the representation, dated 19.08.2000 and to decide the issue of applicability of the statue to the petitioner chit fund company. The respondents issued summons dated 02.07.2018 and directed the petitioner to appear before the authorities on 12.07.2018. The petitioner appeared on 12.07.2018 and submitted their stand along with documents along with letter. Pursuant to the same the respondents had adjourned the hearing on 25.07.2018. On the next hearing date dated 13.08.2018 the petitioner had submitted another representation along with documents.

14. Thereafter the respondents have passed an order, dated 12.02.2019 that was challenged in W.P(MD)No.3710 of 2019. Pending writ petition, again show cause notice dated 25.03.2019 directing the petitioner to appear for hearing on 01.04.2019. The petitioner had submitted a reply dated 27.03.2019 stating the pendency of W.P(MD)No.3710 of 2019 and prayed to defer the hearing. Since no response from the respondents, the petitioner apprehending that the respondents would take coercive steps, the petitioner has



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filed another writ petition in W.P(MD) No.8414 of 2019, challenging the impugned show cause notice, dated 25.03.2019. Hence the three writ petitions are placed before this Court.

15. The respondents have filed counter stating that under 17(1)(a)/(b) to grant exemption from of EPF Scheme 1952, under 17(1C) to grant exemption from the operation of Employees Pension Scheme, 1995 and under 17(2A) to grant exemption from EDLI Scheme 1976, the employer ought to comply with the condition that the benefits provided by the establishments on exemption are more favourable than the benefits admissible under the schemes. In the present case, the establishment covered under the provisions under the EPF and MP Act and allotted PF Code No.TN/17048, with effect from 31.12.1978. The respondents have granted exemption under 17(1)(a)/(b) from of EPF Scheme 1952 to the petitioner company. However under 17(2A) to grant exemption from EDLI Scheme 1976, the respondents have denied exemption to the petitioner. In the said scheme a lump sum insurance amount would be paid to the surviving family members in the event of death while in service and the member need not pay any



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contribution to the Insurance Fund and the amount of benefit extends to the maximum of Rs.6 lakhs. The petitioner's request to exempt from EDLI Scheme, 1976 was rejected vide order dated 26.04.1985 on the ground that the Private Insurance Scheme of the petitioner company was not administered as per the stipulated conditions with effect from 01.01.1979 and hence the request of the petitioner to pay the inspection charges alone treating it to be an exempted one from EDLI scheme was not acceded to.

16. Aggrieved over the petitioner challenged the same in W.P.No.6170 of 1985, but the same was dismissed with liberty. The petitioner submitted fresh representation and the same was rejected since the petitioner scheme is not favourable than the statutory scheme. Again the petitioner filed W.P.No.9911 of 1985 and the same was dismissed, aggrieved over the petitioner preferred W.A.No.840 of 1987 and the same was dismissed. Based on the dismissal the petitioner ought to have complied with the EDLI scheme, hence the respondent issued a letter dated 27.08.1990 directing to comply, but the same was challenged in W.P.No.18432 of 1990 and the same was dismissed on 25.11.1998. Aggrieved



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over the petitioner preferred W.A.No.1036 of 1999 and the same was dismissed with a direction to convince the EPF authorities with regard to the non-applicability of the Act. But the petitioner has not submitted any application seeking exemption.

17. Thereafter, during the annual inspection report conducted for the year 2012-2013 in respect of the exempted Trust, the 3rd observed certain discrepancies and the same was communicated vide letter dated 04.03.2013 to comply with the EDLI scheme and aggrieved over the same the petitioner had preferred W.P.(MD)No.5554 of 2013 with the prayer to consider the representation dated 19.08.2000 and there is no stay. Hence the 1st respondent had decided to conduct enquiry under section 7A for deciding the applicability of the Act and summons was issued on 07.04.2014 to appear on 22.04.2014, but the petitioner submitted representation that the issue is ceased of in W.P.(MD)No. 5554 of 2013 and requested to defer the hearing. The respondents based on legal opinion decided to proceed with the enquiry and directed the petitioner to appear on 11.07.2014 and the same was challenged in writ petition and the Hon'ble



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Court granted interim stay and directed to maintain status quo, hence the respondent has kept the enquiry in abeyance.

18. The petitioner was covered under EPF Act 1952 with effect from 01.01.1979 and complied with the scheme regularly and got exemption from the operation EPF and hence the question of non-applicability does not arise at any moment and that too after complying with the EPF scheme and Pension Scheme. The petitioner was granted the exemption with conditions to invest in the government securities. During the year 2014-2015 and 2015-2016 the petitioner was directed to invest in other securities apart from government securities and the ratio was also prescribed. But the petitioner failed to comply with the condition and deviated from the prescribed pattern and the Board of Trustees are jointly and separately liable to surcharge. Hence a notice dated 21.06.2017 was issued to appear on 04.07.2017 for the proposed levy of surcharge of Rs.1,14,101/-. The petitioner represented by Advocate appeared and sought time and the same was granted till 20.07.2017. On 20.07.2017 the petitioner submitted that the Act is not applicable to the petitioner company.



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19. When the petitioner is already under the purview of the Act and regularly complying as exempted establishment under the provisions of EPF, at this stage disputing the applicability is not appropriate. Hence the enquiry was adjourned to 25.06.2017, 12.09.2017, but the petitioner failed to appear. The petitioner has not disputed the deviation from the prescribed pattern of investments and the petitioner has not provided contrary proof against this allegation, hence the respondent decided to levy surcharge of Rs.38,407/- and 75,694/- for 2014-2015 and 2015-2016 respectively vide proceedings dated 19.09.2017. But the petitioner failed to comply with the order and hence in order to recover the 1st respondent issued prohibitory order dated 30.10.2017 under section 8F to the banker. Aggrieved over the order dated 19.09.2017 and prohibitory order dated 30.10.2017 the petitioner preferred W.P.(MD)No.20347 of 2017 and 20361 of 2017 and vide common order dated 02.03.2018 the same was disposed with a direction to decide the applicability of the Act on or before 30.06.2018 after giving opportunity to the petitioner.



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20. Then the respondents have issued summons, dated 02.07.2018 to appear for enquiry on 12.07.2018. Thereafter based on the submissions, documents the respondents have decided the Act is applicable to the petitioner company with effect from 31.12.1978 as per Notification GSR No. 1458 dated 18.11.1978 and issued proceedings dated 12.02.2019 which is under challenge.

21. The contention of the respondents all the averments of the petitioner establishment regarding non applicability are denied as incorrect since the petitioner is covered under the Act with effect from 31.12.1978, the petitioner had complied with the provisions of the Act, then subsequently got an exemption from the policy of the EPF scheme 1952 by constituting EPF Trust subject to certain terms and conditions. Further, the petitioner establishment complies the provisions till date. Moreover the employees of the petitioner establishment is availing the benefits under the Pension Scheme.

22. Moreover prior to the enactment of Chit Fund Act, 1982 the petitioner establishment came under the purview of the Act, with effect from



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31.12.1978. Hence, the question of non-applicability does not arise at this point.

The petitioner establishment is exempted under section 17 of the Act and is managing Provident Fund contribution by confirming Trust itself is proof the petitioner under falls EPF Act. The judgment referred by the petitioner dealt with the establishment which is exclusively engaged in conducting chit business. But the petitioner has engaged in some other financial activities also which is evident from the memorandum of Association, hence the judgment is not applicable. The petitioner is a habitual litigation and tries to avoid the liability of EDLI contribution and administrative charges by indulging the prolonged litigation. Therefore, the respondents have prayed to dismiss these writ petitions.

23. Heard Mr.Lakshmi Narayanan, the Learned Counsel for Mr.Abinav Parthasarathy and Mr.S.Jeyasingh for the 1st respondent and Mr.K.Murali Sankar for the 2nd and 3rd respondents and perused the material documents placed on record.



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24. From the above facts, totally three issues were raised in the three writ petitions, i.e., are,

1. Whether the petitioner company is not coming within the purview of Notification No. GSR 1458 dated 18.11.1978?
2. Whether the petitioner is carrying on any other financial activities apart from Chit Fund Business?
3. When the petitioner on his own request submitted its establishment under the purview of the EPF Act, whether the petitioner can withdraw at this stage?

25. The Central Government had issued a notification in exercise of power under S.1(3)(b) of EPF and MP Act, 1962 and has brought certain financial institutions under the purview of the Act. The said notification is extracted hereunder:

“New Delhi, the 18th November, 1978

G.S.R. 1458,-In exercise of the powers conferred by clause (b), of sub-section (3) of section 1 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), the Central Government hereby specifies all financing establishments (other than banks) engaged in the activities of borrowing,



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lending, advancing of money and dealing with other monetary transactions with a view to earn interest not being the Unit- Trust of India established under the Unit Trust of India Act, 1963 (52 of 1963), the Agricultural Refinance Corporation established under the Agricultural Refinance Corporation Act, 1963 (10 of 1963), the Industrial Development Bank of India established under the Industrial Development Bank of India Act, 1964 (18 of 1964), the Industrial Finance Corporation of India established under, the Industrial Finance Corporation Act, 1948 (15 of 1948) and State Finance Corporation is established under the State Finance Corporation Acts and in each of which twenty or more persons are employed, as a class of establishments to which the provisions of the said Act shall apply with effect from the 31st day of 1978.

(No. 4(5)/67-PF. B)

S: S. SAHASRANAMAN, Dy. Secy.”

26. Based on the said notification the EPF authorities had initiated proceedings against the said Sudarsan Finance Corporation (in short SFC), but the claim of the said SFC was that the said notification is intended to cover only non-banking financial establishments engaged in the activities similar to Unit Trust Of India, Agricultural Refinance Corporation, Industrial Development Bank of India, Industrial Finance Corporation of India, State Finance Corporation etc. and not financial establishments doing chit business. The said SFC has submitted a representation to the Central Government under Section 19-A of the Act



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requesting to determine the question of applicability of the notification to the Chit Fund Business and the Central Government has passed an order dated 03.08.1981 holding that the SFC would come within the notification under S.1(3)(b) of EPF and MP Act, since it is a financial establishment. Aggrieved over the same the writ petitions were filed before the High Court in W.P.2922 of 1982 and 2870 of 1988 and 7704 of 1988 by Sudarsan Finance Corporation Vs. Regional Commissioner EPF, Madras reported in 1989-1-L.W.291 and this Court vide order dated 24.11.1988 has elaborately considered the case and has held Chit Fund Business will not come under the purview of the said Notification, consequently the Act is not applicable. The relevant portion of the judgment is extracted hereunder:

“6. Notification (GSR No. 1458) states that financial establishments of particular category in which 20 or more persons are employed would be covered by the Act. These financial establishments should be those other than Banks. They must be engaged in the activities of borrowing, lending and advancing of money, dealing with other monetary transactions, with a view to earn interest. If we read the word 'and' as conjunctive, then only such of those financial establishments engaged in monetary transactions with a view to earn interest would be covered by the Act. Meaning of the word 'interest' is obviously a return for the money advanced. When a person



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*gets commission for services rendered, it can hardly be described as interest earned on moneys advanced. The scheme of business chits, which has already been referred to, would show that the Foreman renders some service to the subscribers by collecting the moneys, conducting auctions or distributing the prize amount to the subscribers, after taking a security from him to assure the subscribers' obligation to pay the balance of instalments. The commission earned by him for the services rendered by him has been equated in the impugned orders as interest. This conclusion of the Government cannot be supported. **In Chits, there is no element of interest earned by the Foreman. He only earn commission not exceeding 5 per cent. Within that commission, he has to bear the expenses relating to the bids and the establishment costs. The only reason given in the order of the Government that the commission earned by the Foreman is the interest earned by the establishment on monetary transactions not being supportable, the writ petition is liable to be allowed on this short ground.***

In the present case also the respondents have contended that the petitioner company is indulging other financial activities apart from the Chit Funds and relied on the objects of the company. Wherein the objects states that it includes the power to draw, make, accept, endorse, discount, execute and issue promissory notes, bills of trading, warrants, debentures and other negotiable transferable instruments etc. Based on this objects the respondents contended that the petitioner objects states it is engaged in activities for the purpose of earning



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interest, then the petitioner establishment would be covered under the Act. The learned counsel appearing for the petitioner refuted the said allegation and submitted that these allegations are erroneous. The companies would enumerate several activities and the same cannot be a conclusive of proof that the petitioner is indulging in such financial activities. Infact whenever a company is incorporated all inflated objects would be stated in the Memorandum of Association and the of inflated objects is considered in Motilal Hirabhai Spinning, Weaving and Manufacturing Co. Ltd., by the Hon'ble Gujarat High Court reported in 1970 SCC OnLine Guj 39, wherein it is held that the Memorandum of Association cannot be a conclusive proof to determine the activities of the company. Moreover this contention of the respondents has been negatived in the aforesaid judgment in Sudarsan's case as well. In the present case there is no proof that the petitioner company is indulging in other financial activities, therefore following the judgment stated supra this Court is of the considered opinion that the petitioner is absolutely right in stating that the petitioner is not indulging in other activities with an intention to earn interest and hence is entitled to relief.



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27. The learned counsel appearing for the petitioner further draws support under Chit Fund Act for his contention that the company is not indulging in other financial activities. Under the Chit Fund Act, the Chit Fund companies are prohibited from indulging in any other activity apart from the Chit Fund business and if the Chit Fund company is indulging other activities, it is liable to be closed. The relevant provision is extracted hereunder:

“12. Prohibition of transacting business other than chit business by a company.—(1) Except with the general or special permission of the State Government, no company carrying on chit business shall conduct any other business.

(2) Where at the commencement of this Act, any company is carrying on any business in addition to chit business, it shall wind up such other business before the expiry of a period of three years from such commencement:

Provided that the State Government may, if it considers it necessary in the public interest or for avoiding any hardship, extend the said period of three years by such further period or periods not exceeding two years in the aggregate.”



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28. The validity of the Chit Fund Act, 1982 (Central Act No.40 of the 1982) was considered by the Hon'ble Supreme Court vide judgment dated 13.07.1993 in the case of Shriram Chit and Investment (P) Ltd. Vs. Union of India and others in Civil Appeal No.448 of 1989 batch reported in 1993 Supp (4) SCC 226 wherein it is held as under:

“31. This Section creates a bar for a Company carrying on chit to desists from carrying on any other business. Similar provisions in regard to the ban are contained in Section 8 of the Banking Regulation Act, 1949 which restrain the banks from carrying on any other business. Sub-section (1) of Section 12 of the Act, however, provides that "with the general or special permission of the State Government" the chit company can carry on any business other than the chit business. This section is intended to leave discretion with the State Government to decide whether or not to allow the chit company to do any other business. It was pointed out that certain State Enterprises like Kerala State Financial Enterprises Ltd., were, in addition to chit business, engaged in other types of activities. The Datta Committee and banking Commission had suggested that the public section enterprises may be encouraged to do chit fund business.

32. It was submitted on behalf of the Union of India that it was found that some of the Companies which were carrying on chit business in association with other businesses had diverted chit funds by way of advances to allied firms of the foreman or financing activities unconnected with chit



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business. Many of those advances had become irrecoverable which in turn affected the liquidity of the chit fund companies and as a result the chit fund companies failed to pay the dues to the subscribers. Some of the companies had utilised the funds for shipping business, producing cinemas and also utilised the funds for venturing into fields with high degree of risk. Some of those ventures had flopped, the chit fund companies, had come to grief and consequently defaulted in the payment of dues to the subscribers i.e. subscribers were left high and dry to suffer in silence in view of the prohibitive cost and time consuming nature of litigations. In regard to policy guidelines for exemption i.e. permission to carry on other business the highest authority in Administration has been given the power to determine and the guidelines, of course, are "public interest" and "the interest of the subscribers to the chit". The provisions of the Act gives sufficient guidelines to ensure subscribers' interest. This Section, therefore, is again regulatory and is not hit by Article 19(1)(g) of the Constitution.

While considering the validity of section 12 of the Chit Fund Act the Hon'ble Supreme Court has held that there is bar for Chit Fund Company to carrying on the other business. Moreover the State Government has not granted any permission for the petitioner to carry on other business. In such circumstances, when there is a bar for doing other business apart from Chit Fund business under the Chit Fund Act, relying on Memorandum of Association alone and coming to the conclusion that the petitioner is indulging in the other financial activities is



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erroneous. Therefore this Court is of the considered opinion that the respondents plea is totally non application of mind.

29. Moreover it is seen that the Chit Fund Act, 1982 came into effect from 19.08.1982, whereas the Notification No. GSR 1458 came into effect from 18.11.1978. The contention of the respondents is that since already the petitioner has voluntarily come within the purview of EPF based on the aforesaid notification, the subsequent Judgment rendered in Sudarsan Finance Corporation and the Judgment rendered in Shriram Chits and Investment (P) Ltd. cannot be applicable to the petitioner company. The said plea cannot be entertained, when the subsequent enactment of Chit Fund Act has come into force, where it is made clear that the Chit Fund company is barred from doing any other financial activities, then the petitioner company would come within the purview of the Act and hence the interpretation of the said Notification rendered in Sudarsan's case would be applicable to the petitioner's company. Moreover the respondent cannot exercise its jurisdiction, because any consent or voluntarily acceptance will not confer jurisdiction on the respondents. On combined reading of the Chit Fund Act



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and the Notification read with the judgment of Sudarsan's case, the respondents are not having jurisdiction over the chit fund companies and the chit fund companies are outside the purview of the Notification No. GSR 1458 dated 18.11.1978.

30. Moreover the Chit Fund Act would prevail over the Notification, when the chit transactions are not coming within the purview of the financial activities. Hence the legal principle that the Act would prevail over the Rules, Notification, Circular would come to the rescue of the petitioner.

31. The respondents further submitted that once the petitioner has voluntarily accepted to come within the purview of the EPF Act, cannot now claim to exit from the purview of the Act and relied on Section 1(4) and 1(5) of the Act. The relevant portion of the Act is extracted hereunder:

“(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



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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.]”

On perusal of the aforesaid provisions it is seen that the establishment cannot exit EPF provisions, when there is reduction of strength of the employee. It is an admitted fact that the petitioner has voluntarily accepted the EPF provisions, but the petitioner is not seeking to exempt from the scheme since there is a reduction of employees. The petitioner is seeking to exempt from the scheme, since Chit Fund will not come under the purview of the “financial institution”, consequently, will not come under the purview of EPF Act. The respondents cannot cite this provision to deny the petitioner’s claim of non-applicability of the EPF. Therefore, this Court is of the considered opinion that the plea raised by the respondents is not sustainable.



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32. Moreover it is seen that the entire litigation is only for EDLI scheme. For the other schemes, the petitioner has already formulated their own scheme and the respondents have exempted the petitioner from the purview of the EPF. As far as EDLI scheme the petitioner company has alternative scheme with the LIC. When there is alternative scheme in the petitioner company, then the employees are benefited by the scheme, hence this Court is of the considered opinion that by granting exemption to the petitioner company would be prejudice to the employees. Hence on this ground also the petitioner is entitle to relief. Having said so, the petitioner company is directed to continue with the scheme with LIC, the petitioner company shall not discontinue the scheme with LIC.

33. Hence, for all the reasons as stated above, this Court is inclined to quash the impugned order/notices and inclined to allow all the three writ petitions.

34. For the reasons stated above, impugned communication, dated 04.03.2013 is quashed and the *W.P(MD)No. 5554 of 2013* is allowed. The



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impugned proceedings, dated 12.02.2019 is quashed and the ***W.P.(MD). 3710 of 2019 is allowed.*** The impugned show cause notice, dated 25.03.2019 is quashed and ***W.P.(MD)No.8414 of 2019*** is allowed. The amount of Rs.1,14,101/- shall be refunded to the petitioner. The petitioner is also entitled to all consequential relief as per law. No Costs. Consequently, connected miscellaneous petitions are closed.

Index : Yes / No

12.07.2023

Internet : Yes

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To

1. The Secretary to Government,
Union of India,
Ministry of Labour,
New Delhi.
2. The Regional Provident Fund Commissioner,
Sub-Regional Office of Employees Provident Fund,
Lady Doak College Road,
Chokkukulam,
Madurai – 625 002.
3. The Assistant Provident Fund Commissioner,
Sub-Regional Office of Employees Provident Fund,
Lady Doak College Road,
Chokkukulam,
Madurai – 625 002.



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S.SRIMATHY, J

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Common Order
made in
W.P.(MD)Nos. 5554 of 2013,
3710 and 8414 of 2019

12.07.2023