IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6567 OF 2016

WITH

CIVIL APPLICATION NO. 9364 OF 2018
IN WP/6567/2016

YUVAK VIKAS SHIKSHAN PRASARAK MANDAL THROUGH ITS SECRETARY GANGADHAR DIGAMBARRAO MUNDHE

VERSUS

THE UNION OF INDIA AND OTHERS

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Advocate for the Petitioner : Mr. A. P. Bhandari
Advocate for Respondent No. 5 : Mr. A. S. Londhe
Advocate for Applicants in C.A. No. 9364/2018 : Mr. B. R. Kedar

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CORAM : MANJUSHA DESHPANDE, J.

PRONOUNCED ON : 11 FEBRUARY, 2025

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ORDER :

1. The petitioner is a Trust registered under the provisions of Bombay Public Trust Act, 1950 and it is also registered under the Societies Registration Act, 1860. The petitioner Trust was established in the year 1973 and has established various schools and colleges. Some of the schools and colleges are receiving grant-in-aid while some are running on non-grant basis. According to the petitioner Trust, the staff profile, salary and other aspects of each schools and

college is independently maintained. The majority of the schools and colleges run by the petitioner has a strength of less than twenty (20) employees.

2. It is the contention of the learned Advocate for the petitioner Mr. Bhandari that the petitioner Trust was never subjected to the application of provisions of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as "EPF and MP Act" for short), A notification was issued in the year 1982 under the provisions of the EPF and MP Act thereby bringing the schools and colleges within the purview of application of the EPF and MP Act. It is his contention that there is no functional integrity between schools and colleges of the Trust, each establishment is independent by itself.

3. In one of such establishment of the petitioner i.e. D.Ed. College, an inquiry under Section 7-A of the EPF and MP Act was initiated and without assigning any reason and referring to the alleged report prepared by the respondent No. 4, the petitioner Trust was allotted Registration Number MH/AB/84324. On the basis of the said report dated 06.06.2012 given by the Enforcement Officer, the Trust is registered on 12.06.2012. It is his contention that before the

said registration, neither any copy is made available to the petitioner nor any opportunity of hearing is granted. All of a sudden, a summons was served on the petitioner on 02.05.2013 communicating that an inquiry under Section 7-A of the EPF and MP Act was initiated against the petitioner and summons for such inquiry has been issued calling upon the petitioner to remain present.

4. Though the D.Ed. College of the petitioner was made liable to pay certain amount and that was a matter of challenge before this Court in independent proceeding. During such proceedings, the petitioner Trust got knowledge about the fact that the entire Trust is registered by the Authorities. Therefore, the petitioner has filed an application on 20.11.2013 raising a dispute under Section 7-A of the EPF and MP Act and bringing to the notice of the Authorities various objections to the registration of the Trust.

5. In the said application, the petitioner has requested for cancellation of very applicability of the EPF and MP Act to the petitioner Trust. According to the petitioner, before granting the registration number or granting account number, the satisfaction should have been recorded about the applicability of the EPF and MP Act. It was contended in the application that the Trust cannot be

termed as an establishment under the EPF and MP Act. It is submitted in the application that the inquiry under Section 7-A of the EPF and MP Act was initiated against the D.Ed. Collage for a period from 24.09.2007 to 2011 and a report came to be prepared in the month of June 2012 by the Enforcement Officer. Without referring to the said report and not assigning any reason, the Trust has allotted registration number. Before granting such registration number, the copy of the said report was not furnished to the Trust and the Trust was never subjected to any proceedings under the EPF and MP Act.

6. A notice dated 02.05.2013 was issued to the Trust initiating the inquiry under Section 7-A- of the EPF and MP Act and treating the whole Trust as one establishment, calling upon them to furnish the details of various schools and collages, which are run by the Trust. A belated demand is made in respect of record of schools of the Trust from the year 1984 onwards. The inquiry initiated in the year 2013 demanding the documents from the year 1984 is beyond limitation and is not maintainable after such a long gap of time. The action under the provision of the EPF and MP Act / Statute are required to be taken within a reasonable time. In the present case, the action is not taken within a reasonable time. Therefore, there is a bar of estoppel by conduct. An action or inquiry cannot be initiated after

30 years. The intention of the legislature behind prescribing limitation is that there should be some end to the legal proceedings.

7. After making an application addressed to the Assistant Provident Fund Commissioner, Provident Fund Office, Aurangabad dated 20.11.2013, the petitioner has again filed one more application on 03.02.2015 as well as 17.03.2015. In all these applications, a prayer is made by the petitioner for cancellation of registration of Trust under the EPF and MP Act and also to cancel the inquiry of the Trust as the EPF and MP Act is not applicable to the Trust. Alongwith the applications, the petitioner has also cited various judgments on the issue.

8. In the application dated 17.03.2015, a specific stand is taken that in view of Section 16 of the EPF and MP Act, the grant-in-aid schools and collages, cannot be made subject matter of the proceedings under the Act. In view of the fact that the GPF account are opened and maintained under the relevant provisions of the State enactments under which grant-in-aid schools and collages are run. The petitioner Trust places reliance on the decision of this Court in group of writ petitions which were decided by this Court by common judgment dated 17.02.2017 in **Writ Petition No. 391 of 1998**

alongwith the connected writ petitions. Reliance is placed on paragraph No. 21 of the said judgment, which reads thus :

> *"21. As a result, all such employees (except those who have opted for pension) working in aided or unaided schools are mandated to subscribe to the contributory provident fund under the Contributory Provident Fund Rules (Bombay). Consequentially, keeping in view that the State Government has administrative control even if a school or college is not operated on grant-in-aid basis, Rule 20(1) would make it mandatory for every employee, who has not opted for pension, to subscribe to the C.P.F. notwithstanding whether he is working full time or part time in an aided or unaided school."*

9. Relying on various judgments of the Hon'ble Supreme Court as well as Hon'ble High Court, it was asserted by the petitioner that the petitioner Trust would come under the exemption under Section 16 of the EPF and MP Act. The petitioner has also filed written notes of arguments alongwith the applications dated 20.11.2013 and 17.03.2015.

10. The applications of the petitioner Trust were kept pending for a very long time. The petitioner therefore, filed Writ Petition No. 2180 of 2016 before this Court praying for directions to decide the application dated 20.11.2013. During the pendency of the Writ Petition No. 2180 of 2016, the respondents have decided the application by order dated 24.05.2016. The order dated 24.05.2016 is

assailed in the present writ petition.

11. The order dated 24.05.2016 is challenged by the petitioner on the ground that the order itself clearly reflects non-application of mind by respondent No. 3 i.e. Assistant Provident Fund Commissioner. Learned Advocate Mr. Bhandari has taken me through the order impugned wherein respondent No. 3 has observed that Section 16(1) of the EPF and MP Act shall not apply to any establishment registered under the Co-operatives Societies Act, 1912 or any other laws for time being in force in any State relating to Co-operative Societies employing less than 50 persons and working without the aid of power. It is further observed that the establishment of the petitioner has never been registered under the Co-operative Societies Act, 1912. Hence, the educational institutions has been rightly covered under Section 1(3)(b) read with Section 2-A of the Act as specified at (VI) in the notification of Government of India, Ministry of Labour dated 19.02.1982 w.e.f. 01.06.1984 including its branches such as schools and colleges.

12. Therefore, in view of the observations made regarding the applicability of Section 16(1) of the EPF and MP Act, the application of the petitioner has been disposed of for further

determination of dues of all the branches of the establishment. It was further directed that the AEO should visit the establishment and utilise the powers vested under Section 13 of the Act and submit his report on or before N.D.H.

13. The petitioner is challenging the order dated 24.05.2016 passed by the Assistant Provident Fund Commissioner, on the ground that it was never case of the petitioner that it is covered under Section 16(1)(a) of the Act. In the application filed by the petitioner, it has been consistent stand of the petitioner that the petitioner Trust runs grant-in-aid schools and colleges and the employees are governed by relevant provisions of law and GPF accounts are opened under the relevant provisions. The petitioner has reproduced the observations made in the various reported judgments in the application wherein the issues regarding functional integrity of the establishments have been explained. It was specifically mentioned that the various ratios which were reproduced in the application were applicable to the case of petitioner wherein it was held that the different units run at different places and started at different dates cannot come under one unit and considering that the GPF scheme is already made applicable to the school receiving grant-in-aid, the petitioner would be covered under the exemption under Section 16 of the EPF and MP Act.

14. Without application of mind and without taking into consideration the purport of the application, Respondent No. 3 has passed an order thereby holding that Section 16(1)(a) is not applicable to the establishment since it is not registered under the Co-operative Societies Act. It is the contention of the learned Advocate for petitioner that it was never a claim of the petitioner that they are registered under the Co-operative Societies Act. The petitioner had categorically stated that the employees of the school and college are already registered under the GPF and Pension Scheme of the State Government. Therefore, the EPF and MP Act was not applicable and the exemption has been claimed by the petitioner. Section 16 of the EPF and MP Act is reproduced hereunder.

> **16. Act not to apply to certain establishments.-**
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> [(1) This Act shall not apply—
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> (a) to any establishment registered under the Co-operative Societies Act, 1912 (2 of 1912), or under any other law for the time being in force in any State relating to co-operative societies, employing less than fifty persons and working without the aid of power; or
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> (b) to any other establishment belonging to or under the control of the Central Government or a State Government and whose employees are entitled to the benefit of contributory provident fund or old age pension in accordance with any scheme or rule framed by the Central Government or the State Government governing such benefits; or

> (c) to any other establishment set up under any Central, Provincial or State Act and whose employees are entitled to the benefits of contributory provident fund or old age pension in accordance with any scheme or rule framed under that Act governing such benefits;
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> [(2) If the Central Government is of opinion that having regard to the financial position of any class of 9[establishments] 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 10 [whether prospectively or retrospectively] that class of 9[establishments] from the operation of this Act for such period as may be specified in the notification.]

15. Hence, there are two objections raised by the petitioner to the order impugned - (1) regarding belated invocation of powers by the respondent No. 3 which is at much belated stage; (2) on the ground of total non-application of mind by Respondent No. 3 while passing the impugned order.

16. The writ petition is opposed by the Respondents No. 2 to 4 who are the Authorities under the EPF and MP Act. In the reply affidavit filed by respondents No. 2 to 4, it is contended that in case of failure to deposit the legitimate dues of the workers, the EPFO under Section 7A of the Act initiates assessment and recovery action for the purpose of compelling the employer to deposit the legitimate dues of the workers. Through a *quasi-judicial* process, the dues of the workers

under Section 7-A of the Act are assessed and the employer is asked to deposit the amount. In case of the petitioner, it is submitted that the petitioner society is brought under the purview of the EPF and MP Act w.e.f. 01.06.1984. Respondent No. 3 has received the complaint from the employee of the establishment of the petitioner regarding non-enrollment of EFF number. Therefore, the summons was issued under Section 7-A of the Act on 02.05.2013 calling upon the petitioner to produce relevant records in order to verify the status of membership and assess the dues for the period 6/1984 to 4/2013.

17. The petitioner had submitted an application challenging the applicability of the Act. However, the Enforcement Officer has submitted a report on 10.02.2015 stating that the permission to run the various schools and colleges is granted to the 'society'. Thus, it is established that the school and colleges cannot come into existence unless and until there is Society governing it. Therefore, the Society was allotted the code number for the implementation of the Act. Thus, the allotment is to the Society and not the Trust. It is submitted that Section 16(1)(b) of the Act grants exemption to the establishment set up under the Central or State Act whose employees are entitled for the benefits of the Contributory Provident Fund or old age pension in accordance with any scheme or rule framed under that

governing Act.

18. Since the school and colleges run by the petitioner are of non grant-in-aid basis, therefore the Act is made applicable to the Trust. It is stated that the order has been passed by respondent No. 3 after affording the opportunity of hearing to the petitioner. The Enforcement Officer in his report dated 10.02.2015 had answered all the points raised by the petitioner. The said report was handed over to the petitioner. It is further stated that in order to prolong the proceedings, the petitioner is indulging in litigation. Hence, the respondents No. 2 to 4 prayed that the writ petition be dismissed and the interim relief granted should be vacated.

19. Respondent No. 5 who is the complainant has also filed an affidavit. It is contended by learned Advocate Mr. Lodha appearing for respondent No. 5 that though the Society is making deductions from the salary under the garb of PF, when he made an application for withdrawal of an amount from his Account No. 82627 which was provided by the Trust, the respondent No. 3 intimated him orally regarding non-availability of any PF account. Thereafter, he had applied under the Right to Information Act to the Office of respondent No. 3 vide application dated 18.11.2010. From the information

received under the Right to Information Act, it was disclosed that the D.Ed. College of the petitioner was allotted PF Account No. 82627. At his instance, inquiry was initiated against the petitioner Society and the petitioner was directed to deposit the arrears of of payment of Rs. 8,99,861/- as per the powers conferred under Section 7-A of the EPF and MP Act upon the respondent No. 3. It is his contention that during the inquiry, the Enforcement Officer had filed his report on 10.02.2015 recommending that the Society has to be allotted one uniform PF Account Number since all the units are run by the one and the same Society. It would be covered under uniform PF Account Number. It is the contention of the respondent No. 5 that in view of the inquiry which is conducted by the Enforcement Officer, there is no substance in the application made by the petitioner. Hence, the writ petition should be dismissed by imposing heavy costs on the petitioner.

20. One Civil Application bearing No. 9364 of 2018, is filed by the employees of the petitioner Trust who have filed the intervention application during the pendency of the present writ petition. It is their contention that they were working as Peon in the establishment of petitioner and they have not received the amount of provident fund till date. Though they have made several requests to

respondent No. 1 for release of their PF amount in their favour, respondent No. 1 has not responded to them. Therefore, they have filed an application seeking directions from the Officer of Respondents No. 3 and 4 requesting to disburse the amount of their provident fund. When they have made such request, they were informed that this Hon'ble Court has granted stay to the proceedings in Writ Petition No. 6567 of 2016. Therefore, the inquiry under Section 7-A of the EPF and MP Act which was in progress has been kept in abeyance till the disposal of the writ petition due to which the request of the applicant for disbursal of the amount of his provident fund is not being processed. On this background, the applicants have approached this Court with an intervention application.

21. I have heard the respective parties. Though the petitioner has raised various issues on the merits of the matter, however, upon going through the order impugned which is a very cryptic order, I do not find it necessary to go into the various issues raised by the petitioner. The order impugned does not reflect that the respondent No. 3 has given any finding on the issues raised by the petitioner in his application / objection which was addressed to the respondent No. 3 under Section 7-A of the EPF and MP Act. After going through the order what transpires is that the order is an unreasoned order and it

reflects total non-application of mind by the respondent No. 3. It was a specific contention of the petitioner that they are running various schools and colleges amongst which some of the schools and colleges are grant-in-aid who are governed by the GPF scheme. Therefore, they are exempted under Section 16(1)(b) of the EPF and MP Act. However, while passing the order, respondent No. 3, very casually and without any application of his mind and in a mechanical manner, has passed an order referring to Section 16(1)(a) of the EPF and MP Act whereby an establishment registered under the Co-operative Societies Act, 1912 is exempted from the provisions of the EPF and MP Act.

22. It was never the case of the petitioner that their establishment is registered under the Co-operative Societies Act, 1912 or any other laws for the time being in force, in any state relating to cooperation in Co-operative Societies Act. In all the three applications filed by the petitioner, the consistent stand of the petitioner is that the petitioner is a Society registered under the Bombay Public Trust Act, 1950 and Societies Registration Act, 1860 and it was never contention or claim of the petitioner that they are claiming exemption under Section 16(1)(a) of the EPF and MP Act. Yet the application of the petitioner is rejected on the ground not raised or claimed by the

petitioner, this reflects the casual and cavalier approach of the respondent No. 3. The respondent No. 3 has committed an error in applying Section 16(1)(a) instead of Section 16(1)(b) as claimed by the petitioner to reject the application of the petitioner.

23. Although the petitioner has raised various issues in his application dated 20.11.2013, and in subsequent applications as well as in written submissions, they have also cited various case laws in support of issues raised by them, cryptic order is passed by respondent No. 3 without giving any reason or taking into account the various grounds raised by the petitioner, such order is not capable of being sustained in the eye of law since it cannot be termed as a reasoned order by any stretch. The respondent No. 3 has neither recorded any findings nor passed a reasoned order, in view of the same, the order needs to be interfered with. Hence, the order passed by the Assistant Provident Fund Commissioner dated 24.05.2016 is quashed and set aside.

24. The matter is remanded back to the Respondent No. 3 i.e. Assistant Provident Fund Commissioner, to decide the application of the petitioner afresh after taking into consideration all the issues raised by the petitioner in the application and the applicable case laws cited in the application by passing a reasoned order, after granting

opportunity of being heard to the interested parties.

25. The exercise of deciding the application of the petitioner shall be concluded preferably within a period of four (4) months from the date of receipt of this order.

26. Hence, writ petition is partly allowed and disposed of in above terms. In view of the disposal of the writ petition, the pending civil application also stands disposed of.

[MANJUSHA DESHPANDE, J.]

Omkar Joshi