BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.09.2025

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

WP(MD)Nos.2262 and 2263 of 2020
and
WMP(MD)Nos.1911 to 1914 of 2020

The Chairman
Rathinavel Subramaniam Educational Trust,
Dindigul (Doc.No.17/1983),
RVS Nagar, Karur Road,
Dindigul – 624 005. ...Petitioner

Vs

1.The Regional Provident Fund Commissioner,
Employees Provident Fund Organisation,
Sub-Regional Office, Puducherry,
Sri Venni Commercial Complex,
No.101,100 Feet Road, Cholan Nagar,
Olandai Keerapalayam, Puducherry – 605 004.

2.The Regional Provident Fund Commissioner,
Employees Provident Fund Organisation,
Sub-Regional Office, Madurai,
No.1, Lady Doak College Road,
Bhavishya Nidhi Bhavan, Chokkikulam,
Madurai – 625 002

3.The Manager,
Tamil Nadu Mercantile Bank Limited,
No.9, Salai Road,
Dindigul Road.

4.M/s.Rathinavel Subramaniam Educational Trust,
(Pondicherry) (Doc.No.79/1999),
Rep by its Chairman,
Kalikuppam, Thiruvettakudi,
Kottucherry Committee,
Kottucherry Commune,
Karaikal – 609 609,
Pudhucherry. ...Respondents

[R4 was impleaded vide order dated 09.03.2020 in WMP(MD)Nos.2285 and 2282 of 2020]

PRAYER: Writ Petitions filed under Article 226 of the Constitution of India for issuance of a Writ of certiorarified mandamus calling for the records of relating to the impugned order issued by the 1st respondent in Ref.No.TBM/SRO-PDY/PC/1789/DIV IV/ Comp/2019/1 and 2 dated 19.11.2019, quash the same and further direct the 1st respondent to repay to the petitioner forthwith the sum of Rs.6,55,000/- unauthorisedly withdrawn by him from the petitioner's current Account No. 006150050324097 in the 3rd respondent bank with interest thereon.

For Petitioner : Mr.I.G.Ivyn
for M/s.Isaac chambers
For Respondent : Mr.K.Jeyamohan,
Nos.1 & 2
For Respondent : Mr.N.Dilip Kumar,
No. 3

ORDER

The petitioner an educational trust has filed these writ petitions as against the orders passed by the 1st respondent Regional Provident Fund Commissioner under Section 8 F of the Employees Provident Fund and Miscellaneous Provident Funds Act [herein after shall be referred to as 'the Act'] calling upon this petitioner to pay a sum of Rs.4,26,519/- and Rs.33,98,128/- due for the employees provident fund contribution by the 4th respondent.

2.The 4th respondent an educational trust runs a college at Karaikal. An enquiry under Section 7A of the Act was conducted in the 4th respondent organisation and orders were passed under Section 7A of the Act as against the 4th respondent on 30.09.2019. The 4th respondent has not challenged the orders and has also not paid the contribution. Therefore, the 2nd respondent initiated proceedings under Section 8F of the Act, as against the petitioner organisation, which according to the them is also an unit of the 4th respondent and therefore, it can be recovered from the petitioner's organisation as per the provisions under

Section 2A of the Act. The orders passed under Section 8F of the Act are challenged in these writ petitions.

3.The learned counsel for the petitioner submits that the petitioner organisation is in no way connected with the provident fund contribution to be paid by the 4th respondent. The 4th respondent is a separate entity and the petitioner organisation is a separate entity. However, the learned counsel admits that two of the trustees of the 4th respondent organisation are also functioning as trustees in the petitioner's organisation. However, the authorities have passed an order for attachment of the bank account for the dues of Rs.4,26,519/- and Rs.33,98,128/-. The learned counsel submits that before attachment of the bank account, the respondent authority has not issued any notice even as per Section 8 (3)(ii) of the Act. In the event if they are treating the petitioner organisation as the unit of the 4th respondent, they ought to have issued notice as required under Sub Section (3) (ii) of Section 8F of the Act. However, without issuing any notice, they have attached their bank account and have also taken a sum of Rs.6.55 lakh from the account of the petitioner bank for the contribution due by the 4th respondent. The petitioner organisation is in existence from the year 1983, the 4th respondent organisation is a separate entity, which has been established in the year 1999 at Karaikkal. For the contribution of the 4th respondent, the 2nd respondent has erroneously attached the bank account of the petitioner organisation.

4.The learned counsel for the 2nd respondent submits that the trustees of the petitioner organisation and the 4th respondent organisation are one and the same. In the enquiry conducted under Section 7A of the Act they found that one Dr.V.Kuppusamy is the Chairman and Managing Trustee of the Rathinavel Subramaniam Educational Trust at Coimbatore and he is also the Chairman and Managing Trustee of the Rathinavel Subramaniam Educational Trust at Karaikal. Likewise one Tmt. K.Padmavathy, Trustee and one Mr.K.Senthil Ganesh, Trustee are also trustees in both the educational trusts at Coimbatore and Karaikal. He also submits that these trustees have appeared in the enquiry under Section 7A of the Act as against the 4th respondent at Karaikkal, they are aware of the proceedings and they are also added as 4th respondent in these writ petitions. However, they have not filed any response to these writ petitions.

5.The learned counsel has referred to the provisions under Section 2A of the Act and submits that this provision enables the authority to recover the contribution from the branches of the same establishment functioning at different places. The learned counsel also submits that theory of unity has been discussed elaborately in the judgment of the Hon'ble Supreme Court in ***L.N.Gadodia and Sons and Ors Vs Regional Provident Fund Commissioner*** reported in ***AIR 2012 SC 273***, wherein it is held as under:

> *"11.Now, on the question as to whether such two units should be considered as one establishment or otherwise, there is no hard and fast rule. However, guidelines have been laid down in two judgments of this Court rendered way back in the years 1959-60 and they are followed from time to time. Thus, in The Associated Cement Companies Ltd., Chaibasa Cement Works, Jhinkpani Vs. Their Workmen reported in [AIR 1960 SC 56], a bench of three judges was considering the question as to whether the factory and the limestone quarry belonging to the appellant company should be considered as one establishment for the purpose of Industrial Disputes Act, 1947. This Court observed therein as follows:-*
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> > *"11. .... What then is `one establishment' in the ordinary industrial or business sense? .... It is, perhaps,*

impossible to lay down any one test as an absolute and invariable test for all cases. The real purpose of these tests is to find out the true relation between the parts, branches, units etc. If in their true relation they constitute one integrated whole, the establishment is one; if on the contrary they do not constitute one integrated whole, each unit is then a separate unit. How the relation between the units will be judged must depend on the facts proved, having regard to the scheme and object of the statute which gives the right of unemployment compensation and also prescribes a disqualification therefor. Thus, in one case the unity of ownership, management and control may be the important test; in another case functional integrality or general unity may be the important test; and in still another case, the important test may be the unity of employment. Indeed, in a large number of cases several tests may fall for consideration at the same. The difficulty of applying these tests arises because of the complexities of modern industrial organization; many enterprises may have functional integrality between factories which are separately owned; some may be integrated in part with units or factories having the same ownership and in part with factories or plants which are independently owned."

Later in paragraph 5 of Management of Pratap Press, New Delhi Vs. Secretary, Delhi Press Workers' Union Delhi reported in [AIR 1960 SC 1213], another bench of

> *three judges explained the above proposition in Associated Cement Company (supra) in the following words:-*
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> *" ......While pointing out that it was impossible to lay down any one test as an absolute and invariable test for all cases it observed that the real purpose of these tests would be to find out the true relation between the parts, branches, units etc. This court however mentioned certain tests which might be useful in deciding whether two units form part of the same establishment. Unity of ownership, unity of management and control, unity of finance and unity of labour, unity of employment and unity of functional "integrality" were the tests which the Court applied in that case.......*

12. Accordingly, depending upon the facts of the particular case, in some cases the concerned units were held to the part of one establishment whereas, in some other cases they were held not to be so. Regional Provident Fund Commissioner Vs. Dharamsi Morarji Chemical Co. Ltd. reported in [1998 (2) SCC 446] and Regional Provident Fund Commissioner Vs. Raj's Continental Export (P) Ltd. reported in [2007 (4) SCC 239] are cases where the two units were held to be independent. In Dharamsi Morarji (supra), the appellant company was running a factory manufacturing fertilizers at Ambarnath in Distt. Thane, Maharashtra since 1921. The appellant established another factory at Roha in the adjoining district in the year 1977 to manufacture organic chemicals with *separate set of workers, separate profit and loss account, separate works manager, plant superintendents and separate registration under the Factories Act. The two were held to be separate for the purposes of coverage under the Provident Funds Act. In Raj's Continental Export (supra), Dharamsi Morarji was followed since the two entities had separate registration under the Factories Act, Central Sales Tax Act, 1956, Income Tax Act, 1961, Employee State Insurance Act, separate balance sheets and audited statements and separate employees working under them.*

13. As against that in Rajasthan Prem Krishan Goods Transport Co. Vs. Regional Provident Fund Commissioner, New Delhi reported in [1996 (9) SCC 454] and Regional Provident Fund Commissioner, Jaipur Vs. Naraini Udyog and others reported in [1996 (5) SCC 522] the concerned units were held to be the units of the same establishment. In Rajasthan Prem Kishan Goods Transport Co. (supra) the trucks piled by the two entities were owned by their partners, ten out of thirteen partners were common, the place of business was common, the management was common, the letter-heads bore the same telephone numbers. In Naraini Udyog (supra) the two entities were located within a distance of three kilometers as separate small-scale industries but were represented by the members of the same Hindu undivided family. They had a common head office at New Delhi, common branch at Bombay and common telephone at Kota. The accounts of the two entities were maintained by the same set of clerks. Separate registration *under the Factories Act, The Sales Tax Act and The ESIC Act were held to be of no relevance and the two units were held to be one establishment for the purpose of Provident Funds Act.*

14. In the present case the Directors of the two petitioner companies belong to the same family. The Managing Director is common. The two senior officers i.e Commercial Manager and Technical Manager are common. At the time of inspection, the Enforcement Officer noticed that the employees of the two companies were being swapped. Both of them have same registered address and common telephone numbers and a common gram number. The audited accounts revealed that the second petitioner company had given a loan of Rs. 5 lakhs to the first petitioner in the year 1988. The two companies are family concerns of the Gadodia family. Hence, in the facts of the present case we have to hold that there is an integrity of management, finance and the workforce in the two private limited companies. The two companies have seen to it that on record each of the two entities engage less than twenty employees, although the number of employees engaged by them is more than twenty when taken together. The entire attempt of the petitioners is to show that the two entities are separate units so that the Provident Funds Act does not get attracted. The material on record however, leads to only one pointer that the two entities are parts of the same establishment and in which case they get covered under the Provident Funds Act."

6.The learned counsel further submits that the EPF Act is the social beneficial legislation and the petitioner and the 4th respondent are evading the EPF contribution. Therefore, they have also attached the bank account of the petitioner, since the PAN of the 4th respondent reflects in the bank account of the petitioner organisation.

7.The learned counsel for the 3rd respondent submits that the amount has been credited to the account of the EPF authority before filing of these writ petitions.

8.This court considered the rival submissions made and perused the materials placed on record.

9.For the liability of the 4th respondent organisation, the 2nd respondent has recovered the contribution from the account of the petitioner. The petitioner claims that they are separate entity, however, they are not disputing the managing trustee of the petitioner organisation is the managing trustee of the 4th respondent organisation also. The 4th respondent is also added as a party to these writ petitions.

On behalf of the 4th respondent trustee, who has filed this petition, no objection has been raised. Therefore, the case of the 2nd respondent is that the petitioner organisation and the 4th respondent organisation are one and the same unit and is liable to be prosecuted as per Section 2A of the Act. However, for the contribution of the 4th respondent organisation, the EPF authority has attached the bank account of the petitioner organisation without even issuing notice to the petitioner organisation. On this sole ground this court is inclined to set aside the impugned orders.

10.Accordingly, the impugned orders are set aside. The 1st respondent is directed to issue notice under Section 8F(3)(ii) of the Act, to the petitioner and all other trustees, conduct an enquiry by recording the statement of the trustees also and thereafter pass orders. The amount already attached from the petitioner's bank account is subject to the result of the aforesaid enquiry.

11.These writ petitions are disposed of in the above terms. Consequently connected miscellaneous petitions are close

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DSK

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