28.04.2026
Ct. No. 30
S.L. No. 15
SM

WPA 5171 of 2009
Aditya Translink Pvt. Ltd. & Anr.
Versus
Regional P.F. Commissioner & Ors.

Mr. Shyamal Sarkar
Mr. S.K. Poddar
.......for the petitioners
Mr. Shiv Chandra Prasad
.......for the PF authorities

1. Learned senior counsel appearing for the petitioner moves the present writ application wherein it appears that the petitioner in the writ application had prayed for the following reliefs.

"(a) Declaration that provisions of Para 27AA and Clauses 7 & 9 of Appendix-A thereto of the Employees' Provident Fund Scheme, 1952 transgress and/or the ultra virus the Employees' Provident Fund and Miscellaneous Provisions Act, 1952, Companies Act, Income Tax Rules and are null and void and not enforceable.

(b) A writ of and/or in the nature of Mandamus do issue directing the respondents and each of them to withdraw, rescind and/or cancel the impugned summons dated February 17/25, 2009 and/or the proceedings under Section 7A of the Provident Fund Act 1952, initiated thereunder."

2. It appears that the present writ application was part of the several writ applications which were heard along with WP 6138(W) of 2009, as seen from the order dated 14.11.2011.

3. 19 writ applications, along with WPA 6138 (W) of 2009 were disposed of by this Court on 20.04.2026, by a single judgment.

4. It appears that due to inadvertence, the present writ application was not put up for disposal along with said writ applications.

5. Thus, on hearing the learned counsels for the parties and on perusal of the materials on record and considering the fact that the issues in the bunch of writ applications (20) and the present writ application being similar, the writ application herein is also disposed of on the following observations:-

a) **Section 17** of the Employees Provident Funds and Miscellaneous Provision Act, 1952, lays down the power of the appropriate government to exempt.

Section 17 EPF Act:- ***Power to exempt.—****(1) The appropriate Government may,* ***by notification in the Official Gazette and subject to such conditions as may be specified in the notification,*** *[exempt, whether prospectively or retrospectively, from the operation] of all or any of the provisions of any Scheme…………"*

b) **Para 27AA of the Employees Provident Funds Scheme lays down:-**

> ***“27-AA. Terms and conditions of exemption.- All exemptions already granted or to be granted*** *hereafter under Section 17 of the Act or under paragraph 27-A of the scheme shall be subject to the terms and conditions as given in the appendix A.”*

c) Para 27AA of the EPF scheme has been brought in by way of an amendment (with effect from 06.01.2021) to the scheme and made applicable to the exemption granted under Section 17 of the EPF Act.

d) **One option** would be to cancel or surrender or withdraw the exemption which has been granted to the establishments under Section 17 of the Act, by the appropriate government, if the terms and conditions of Para 27AA of the scheme are more favourable, **than the conditions specified in the notification granting exemption under 17 of the Act.**

e) **The other option** would be that, though Para 27AA of the EPF scheme lays down the terms and conditions of exemption and also makes it applicable to all exemptions **already granted or to be granted** under Section 17 of the Act or under Para 27A of the scheme, which shall be subject to the terms and conditions as given in appendix ‘A’, **the same can be made applicable to an exempted establishment,** only by the appropriate government, which granted exemption to an establishment, **by modification of and or amendment** to the **notification granting exemption** in the **official gazette,** ***on such conditions as may be specified in the notification and while doing so could exempt, whether prospectively or retrospectively from the operation of all or any of the provisions of the scheme.***

f) Thus Section 17 EPF Act gives strength to the argument of the petitioners that when such exempted establishments have been exempted from the provision of the scheme, an amendment to the said scheme (Para 27AA) would also not apply to such establishment. But the mischief here has been caused by the wording in Para 27AA of the scheme. **The said mischief can be undone only by acting as per Section 17 of the EPF Act, which granted the initial exemption.**

g) As such, by way of an **(amended)** exemption notification in the official gazette, by the appropriate government herein, Para 27AA of the EPF scheme can be made applicable to such exempted establishments, granted exemption under Section 17 of the Act.

6. Section 17 of the EPF Act, by itself is very specific and clear to the extent that:-

i. Such exemption has to be granted by the appropriate government, by notification in the official gazette.

ii. Such exemption has to be subject to such conditions as may be specified in the notification.

As such without the conditions being specified in the notification, the same cannot be made applicable to an establishment being granted exemption under Section 17 of the Act.

iii. The said notification granting exemption could be prospective or retrospective, from the operation of all or any of the provisions of any scheme.

As such for such conditions and provisions of any scheme to be made applicable to an exempted establishment, the same would have to be done by the appropriate government by notification in official gazette, as per Section 17 of the EPF act and without compliance of the provision of Section 17 EPF act, the provision of the scheme herein, being para

27AA, is not applicable to the establishments, who have been granted exemption under Section 17 of the EPF Act.

7. The following observations of the Supreme Court in ***Jiyajeerao Cotton Mills Ltd. vs Dev Kumar Holani & Ors., (1998) AIR (SC) 2480,*** are clear on the said issue:-

> ***"9. ....unless the appropriate Government issued a notification amending the exempted scheme and published the same in the Official Gazette, Condition 4 did not apply to them. Admittedly, no such notification amending the exempted scheme framed by the appellant and Respondent 10 was issued by the State Government.".........***
>
> ***9. ...."The revised terms and conditions did not and could not have become applicable automatically, and in order to make them applicable, they were required to be incorporated by the appropriate Governments in the notification granting exemption under Section 17(1)(a)."***
>
> *19.* ***The appropriate government in these cases however <u>has not varied the conditions of</u>***

> ***<u>exemption</u> but on the other hand the statutory scheme itself has been amended, from following which the concerned establishments have been exempted………………"***

8. Accordingly, the writ application being WPA 5171 of 2009 is disposed of with the directions as follows:-

a) Para 27AA of the employees provident fund scheme, with appendix 'A' is **not ultra vires** of the employees provident fund and miscellaneous provisions act, 1952.

b) **Para 27AA of the employees provident fund scheme, 1952 with appendix 'A' is not applicable to the establishments exempted under Section 17 of the EPF Act, unless and until, the conditions of exemption is modified by way of an amendment in a notification published in official gazette making the provision of Para 27AA of the EPF scheme applicable to such exempted establishment.**

c) Thus, all notices and orders challenged in the writ applications herein, issued stating non compliance/violation of Para 27AA/appendix 'A' of the employees provident fund scheme, 1952, **are hereby quashed and set aside.**

[Shampa Dutt (Paul). J]