2023 INSC 909

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.4188 OF 2013

M/s MATHOSRI MANIKBAI KOTHARI COLLEGE OF VISUAL ARTS ... Appellant(s)

VERSUS

THE ASSISTANT PROVIDENT FUND COMMISSIONER ... Respondent(s)

J U D G M E N T

RAJESH BINDAL, J.

1. The order dated 30.09.2011, passed by the Division Bench of the Gulbarga Bench of the Karnataka High Court in a Writ Appeal[1] has been impugned by the appellant before this Court. *Vide* aforesaid order, the Division Bench has upheld the order dated 10.06.2011, passed by the learned Single Judge in Writ Petition[2]. The Single Judge

[1] Writ Appeal No. 10133 of 2011.
[2] Writ Petition No. 80995 of 2011.

upheld the order[3] passed by the Tribunal[4] dated 24.12.2010 and also upheld the application of EPF Act[5] to the appellant's institution.

2. Briefly the facts, available on record, are that the Ideal Fine Arts Society[6] runs two institutions, namely, the 'Ideal Institute of Fine Arts'[7] and 'Mathosri Manikbai Kothari College of Visual Arts'[8]. Both, the Ideal Institute as well as the Arts College are being run in the same campus. The Ideal Institute was set up way back in the year 1965, offering Diploma Course in drawing and painting, whereas the Arts College was set up in the year 1985-86, offering Degree and Post-Graduate Degree in drawing and painting. It was claimed that the Ideal Institute employed 8 persons, whereas the Arts College had 18 employees. The issue arose with reference to their coverage and application of the EPF Act. Based on the report of the Enforcement Officer dated 01.07.2003, it was reported that there being total 26 employees working in both the Institutes, which are managed by the same Society and within the same premises, the establishment would be covered under the provisions of the EPF Act w.e.f. 01.03.1988. Thereafter, a notice was issued to the establishment and after affording

[3] In ATA No.03/06/2006
[4] Employee Provident Fund Appellate Tribunal.
[5] The Employees' Provident Funds and Miscellaneous Provisions Act, 1952.
[6] For short, 'Society.
[7] For short, 'Ideal Institute'.
[8] For short, 'Arts College'.

an opportunity of hearing, an order was passed by the Commissioner[9] on 23.09.2005, under Section 7-A of the EPF Act, assessing the amount of contributions to be made by the appellant under various schemes of the EPF Act. The aforesaid order was challenged by the appellant through statutory appeal before the Tribunal, which was dismissed *vide* order dated 24.12.2010. Thereafter, the appellant filed a Writ Petition challenging the order passed by the Tribunal before the High Court, which was dismissed by the learned Single Judge *vide* order dated 10.06.2011. In writ appeal, the order of the learned Single Judge was upheld by the Division Bench of the High Court.

3. Learned counsel for the appellant, submitted that the impugned orders passed by the Commissioner, the Tribunal, as well as the High Court are not legally sustainable. The appellant submitted that both the Institutes, namely, Ideal Institute and Arts College are independent from each other and are merely being managed by the same Society. There is no financial integrity between the two Institutes and both the Institutes are offering different courses, having permission/affiliation from different authorities. The Ideal Institute is getting 100% grant-in-aid, whereas the Arts College is getting 70% grant-in-aid from the Government of Karnataka. The Ideal Institute was

[9] The Assistant Provident Fund Commissioner.

set up in the year 1965, whereas the Arts College was set up in the year 1985-86. Furthermore, the appellant submitted that, since both the Institutes are independent from each other and are not employing 20 or more persons, their clubbing for coverage under the provisions of the EPF Act, is totally illegal and deserves to be set aside. In support of his arguments, reliance was placed by the appellant upon **Management of Pratap Press, New Delhi v. Secretary, Delhi Press Workers' Union Delhi etc., AIR 1960 SC 1213.**

4. On the other hand, the learned counsel for the respondent submitted that, if the tests laid down by this Court in **L.N. Gadodia & Sons v. Provident Fund Commissioner, (2011) 13 SCC 517**, are applied in the present case, it will be evident that there is no error in the orders passed by the Commissioner, the Tribunal or the High Court, directing coverage of both the Institutes run by the Society, under the EPF Act. The respondent submitted that it is a case in which neither the appellant nor the Ideal Institute or the Society, which is managing the affairs of the Institutes, had placed any material before the Commissioner, the Tribunal or even the High Court to dislodge the facts found by the Enforcement Officer and established that both the Institutes are independent and have no common management. The audit report which has been placed on record before this Court is for

the year ending March 2011, which was finalised on 16.08.2011. The same was not even placed on record before the High Court, though the appeal was decided on 30.09.2011. No argument referring to the audit report was raised before the High Court.

5. The learned counsel for the respondent further submitted that, once the notice was issued to the establishment regarding application and coverage under the provisions of the EPF Act by clubbing the two Institutes being run by the Society, the onus was on the establishment to controvert the same, by placing relevant material on record. In fact, even before the Commissioner, the appellant failed to produce any record and appear regularly. The Tribunal also adjudicated the appellant's appeal in its absence. The Single Judge of the High Court had also noted that the appellant had failed to produce any material to support the claim that there is no common supervisory or financial management and that the two Institutes were distinct with separate management and not interconnected. The fact remained that both are being run by the same Society. The respondent further submitted that copy of the statement of bank account, placed on record by the appellant before this Court, shows that the account was opened on 07.07.2004. Thus, the same will not establish that both the Institutes are not being run by the same Society and are independent. The

respondent also submitted that just because the two Institutes are offering different courses, having permission from different authorities, will not exclude the coverage under the EPF Act. Even the fact that one of the Institutes is getting 100% grant-in-aid whereas the other is getting 70%, is also not relevant. The respondent submitted that there is no merit in the present appeal and the same deserves to be dismissed. Reliance was placed by the respondent upon judgments of this Court in **Noor Niwas Nursery Public School v. Regional Provident Fund Commissioner and others, (2001) 1 SCC 1** and **Shree Vishal Printers Limited, Jaipur v. Regional Provident Fund Commissioner, Jaipur and another (2019) 9 SCC 508**.

6. We have heard learned counsel for the parties and perused the relevant referred record.

7. The undisputed facts on record are that the Society had initially set up 'Ideal Institute' in the year 1965 and later it set up 'Arts College' in the year 1985-86. Both the Institutes are being managed by the Society. It is also an admitted fact that the Ideal Institute employed 8 persons, whereas the Arts College employed 18 persons. Under the provisions of the EPF Act, if any establishment employs 20 or more persons, the same shall be covered under the provisions of the EPF Act

for grant of various benefits thereunder to the employees working there, the EPF Act being a welfare legislation.

8. The issue which requires consideration in the present appeal is regarding the clubbing of two Institutions being run by the same Society i.e., Ideal Fine Arts Society. In case the two Institutions are interconnected, these can be clubbed for the purpose of coverage under the EPF Act.

9. Before we deal with the arguments raised by the learned counsel for the parties, we deem it appropriate to refer to the settled legal position with reference to clubbing of different institutes for the purpose of coverage under the EPF Act.

10. In **Pratap Press's** case **(*supra*)**, this Court referred to the earlier judgment of this Court in **Associated Cement Co. v. Workmen, AIR 1960 SC 56,** wherein it was opined that it is impossible to lay down any one test as absolute and invariable for all cases to determine the issue regarding clubbing of two establishments for the purpose of coverage under the EPF Act. The real purpose is to find out true relations between the two establishments and finally opine thereon. In one case, 'unity of ownership, management and control' may be an important test whereas in another 'functional integrity' or

'general unity' may be important. There can also be a case where the test can be of the 'unity of employment'. Relevant para 5 thereof is extracted below:

> "**5**. In Associated Cement Co. v. Workmen [AIR 1960 (SC) 56] this Court had to consider the question whether the employer's defence to a claim for lay-off compensation by the workers of the Chaibasa Cement Works that the laying off was due to a strike in another part of the establishment viz. limestone quarry at Rajanka was good. In other words the question was whether the limestone quarry of Rajanka formed part of the establishment known as the Chaibasa Cement Works within the meaning of Section 25-E(iii) of the Industrial Disputes Act. 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 "integrity" were the tests which the Court applied in that case. It is obvious there is an essential difference between the question whether the two units form part of one establishment for the purposes of Section 25-E(iii) and the question whether they form part of one single industry for

the purposes of calculation of the surplus profits for distribution of bonus to workmen in one of the units. Some assistance can still nevertheless be obtained from the enumeration of the tests in that case. Of all these tests the most important appears to us to be that of functional "integrity" and the question of unity of finance and employment and of labour. Unity of ownership exists ex hypothesie. Where two units belong to a proprietor there is almost always likelihood also of unity of management. In all such cases therefore the Court has to consider with care how far there is "functional integrity" meaning thereby such functional interdependence that one unit cannot exist conveniently and reasonably without the other and on the further question whether in matters of finance and employment the employer has actually kept the two units distinct or integrated."

(emphasis supplied)

11. Similar was the position in **Regional Provident Fund Commissioner v. Naraini Udyog, (1996) 5 SCC 522,** wherein this Court found the functional integrity with common management of two different establishments controlled by the same Hindu Undivided Family (HUF) and having a common head office, even though located at a distance of three kilometres. Merely fact of having separate registration under the Factories Act 1948, Sales Tax Act 1956 and the

ESI Act 1948, was held to be non-relevant for the purpose of clubbing and coverage under the EPF Act.

12. The **Pratap Press's** case ***(supra)*** was also referred in **Noor Niwas Nursery Public School** ***(supra)*** wherein this Court held that no straight jacket formula or test can be laid down for the purpose of clubbing of the two establishments and coverage under the EPF Act. Relevant para 5 therein is extracted below:

> "**5.** In the present case, when two units are located adjacent to one another and there are only two teachers with an aaya, a clerk and a peon, it is difficult to believe that the society which runs 30 schools would run a separate school consisting of such a small number of staff. If the unit of the appellant School was not part of the unit of Francis Girls Higher Secondary School, the Head Clerk, Mrs Wadhavan could not have been in possession of the particulars of the appellant School and could not have furnished such particulars to the Inspector when he visited the school in connection with the grant of a code number. Undisputedly, the two units are run by the same society and they are located in one and the same address thereby establishing geographical proximity and nothing worthwhile has been elicited in the cross-examination of the Inspector in regard to inquiries made by him from Mrs P. Wadhavan. Mrs P. Wadhavan was not examined before the Provident Fund Commissioner. All these facts clearly

point out to one factor that the two units constitute one single establishment. After all the appellant School caters to nursery classes, while the higher classes are provided in Francis Girls Higher Secondary School. Thus, the link between the two cannot be ruled out. In the facts and circumstances of the case, we hold that the view taken by the Provident Fund Commissioner as affirmed by the High Court in this regard is correct."

(emphasis supplied)

13. The facts of the case in **Noor Niwas Nursery Public School (*supra*)** are almost identical to the case in hand. Therein, two educational institutions were being run by the same society. One institution was the Higher Secondary School and another one was the Nursery School (the appellant therein). The appellant contended that since the two institutions have separate and independent accounts and are managed by the two different managing committees, thus both the institutions can't be treated as one establishment for the purpose of clubbing and coverage under the EPF Act. The issue before this Court was to determine how far there is functional integrity between the two units and whether one unit can exist conveniently and reasonably without the other. This Court after pursuing the material available on record, held that two institutions were run by the same society and are

located in one premises having same address, thereby, establishing geographical proximity, hence, were rightly clubbed for coverage under the EPF Act.

14. In **L.N. Gadodia & Sons's** case ***(supra)***, the issue under consideration before this Court was regarding the clubbing of two companies namely, Delhi Cattle Farming Pvt. Ltd and Delhi Farming and Construction Pvt. Ltd. It was argued by the appellant therein, that both these companies were independently incorporated at different times and there was no connection between their activities or the business. However, the Enforcement authority argued that both the companies had their registered office at the same place wherein some of the directors were also common. There were financial transactions between the two companies. Both the companies had the same telephone number and were using the same gram number. The issue before this Court was as to whether these two companies, despite having separate legal entities, common management, financial integration and workforce proximity, should be considered a single establishment under the EPF Act. This Court held that despite being separate entities, both the institutions were effective branches of the same establishment because they were run by the same management, workforce and have common financial integrity. Hence, the Court held

that the EPF Act will be applicable and both the companies will be regarded as one establishment for the purpose of coverage under the EPF Act.

15. Now coming to the facts of the case in hand, as had already been noticed above, both the Institutes are being run by the same Society. The Ideal Institute was set up in the year 1965, whereas the Arts College (the appellant) was set up in the year 1985-86. If the employees employed in both the institutes are added, the total number of employees would be 26, which will be sufficient for coverage in terms of Section 1(3)(b) of the EPF Act, which stipulates that an institute employing 20 or more persons is liable to be covered under the provisions of the EPF Act. It is also a fact not in dispute that both the institutes are being run in the same campus.

16. From a perusal of various orders and documents produced on record, it is evident that the appellant had taken the case very casually. After the inspection of the institute, report was submitted by the Enforcement Officer on 01.07.2003, wherein it was stated that there being total 26 employees working in both Institutes, being managed by the same Society and within the same premises, the establishment would be covered under the provisions of the EPF Act w.e.f. 01.03.1988. It is the date from which the EPF Act was made applicable

to the educational institutions. The coverage was confirmed *vide* order dated 12.08.2003. There is nothing pointed out by learned counsel for the appellant, that the aforesaid two orders clubbing both the establishments provisionally and thereafter finally was challenged by the appellant. If yes, the same was not presented before this Court. The proceedings in the present case started after an order was passed by the Commissioner on 23.09.2005 under Section 7-A of the EPF Act, which provides for determination of the dues payable under the EPF Act, for the benefits of the employees. The Commissioner's order begins with the line that the establishment has been covered under the provisions of the EPF Act and Schemes framed there under. Further, it recorded that the management had responded to the notice issued by the Commissioner on 30.06.2004 *vide* its letter dated 14.12.2004, disputing the applicability of the provisions of the EPF Act. The order passed by the Commissioner also recorded that on various dates when the matter was listed, either no one appeared on behalf of the management or only adjournment was sought. It was also recorded that the management had failed to produce the relevant records. The Enforcement Officer had to visit the establishment for the inspection. The report mentions that there were total 26 employees. Thereafter, the establishment had pointed out that, 8 out of the 26 employees were

working in the aided Institute i.e., Ideal Institute, thus, these ought to be excluded for the purpose of calculation of dues under the EPF Act. The issue raised in the present appeal is not regarding the calculation of dues under the EPF Act, rather it is regarding the coverage of the EPF Act by clubbing of two Institutes. In fact, no arguments were raised regarding calculation.

17. After verification of all the documents, the Commissioner passed an order wherein it determined the amount due under various schemes of the EPF Act. The appellant filed a Review Petition under Section 7-B of the EPF Act, which was rejected by the Commissioner *vide* order dated 14.11.2005. Aggrieved by the orders, the appellant filed an appeal before the Tribunal. However, no one appeared when the appeal was taken up for hearing. The Tribunal while considering the merits of the case, recorded that the onus to prove that the employees were less than 20 for exclusion of the applicability of EPF Act before the Commissioner, was on the appellant and the appellant had failed to discharge the same. Thus, there was no error in the order passed by the Commissioner under Section 7-A of the EPF Act.

18. Still aggrieved, the appellant filed a Writ Petition before the High Court. The learned Single Judge of the High Court held that since both the Institutes were run by the same management and there was

common supervisory and financial control within the Institutions, thus both are inter-connected. It was also noted that the appellant had failed to produce any material to dislodge the aforesaid facts. The learned Single dismissed the Writ Petition. The Division Bench also upheld the order passed by the Single Bench and dismissed the Writ Appeal.

19. Though the aforesaid material is sufficient to non-suit it, to be fair to the appellant, we will deal with the documents which have been placed on record by the appellant before this Court but not before any of the authorities under the EPF Act or the High Court. The first one is the letter dated 09.12.1987 from the University Grants Commission conveying the Registrar, Gulbarga University, Gulbarga, about the inclusion of the appellant college in the list of the approved colleges under the non-Government colleges, teaching upto Bachelor's degree. The name of the college is mentioned as 'The Ideal Fine Arts Society's College of Visual Art', a copy of which is also endorsed to the Principal of the aforesaid College. It shows that the College is nothing but an extended arm of the Society. The next document is the certificate of accreditation issued by the National Assessment and Accreditation Council on 04.11.2004. This accreditation has been issued in the name of 'The Ideal Fine Art Society's Mathosri Manikbai Kothari College of Visual Arts'. This

document again belies the stand of the appellant that both the institutes are independent. The documents produced by the appellant themselves show that it is not an independent establishment but an arm of the Society.

20. The next document is the audit report of the Ideal Fine Arts Society's Mathosri Manikbai Kothari College of Visual Arts for the year ending March 2011. The accounts were finalized on 16.08.2011. Though, it may not be relevant considering that the two establishments managed and run by the same Society were clubbed way back in 2003 and the assessment order under Section 7-A of the EPF Act was passed by the Commissioner on 23.09.2005, still a perusal of the balance sheet of the appellant clearly shows deposits from both the Society and the Ideal Fine Arts Trust. It shows financial integrity of the appellant with the Society which is running both the Institutes. Schedule No.4 attached to the Income and Expenditure Account shows details of the capital receipts. It mentioned Hand Loan from Ideal Fine Arts Trust and the Ideal Fine Arts Society. Similar accounts of the Ideal Institute have been withheld from the Court, as the same would have certainly undermined the appellant's case of financial integrity with the Society, which manages both the Institutes, and therefore, the management thereof. What has been placed on record with reference to the Ideal

Institute is the Receipt & Payment Accounts for the years ending 31.03.2009 and 31.03.2010. Even these statements show loan from Ideal Fine Arts Trust. A certificate from the Corporation Bank dated 03.06.2009, has also been produced, before this Court, showing that the account was opened on 07.07.2004, in the name of the Ideal Institute. The name of the introducer for opening the account is shown as the 'Ideal Fine Arts Trust'. No other documents for the period from 1988 till the Commissioner's order, were submitted. Even the documents pertaining to the subsequent period weaken the appellant's case.

21. Even the judgment of this Court in **Pratap Press**'s case ***(supra)*** relied upon by the learned counsel for the appellant does not come to the rescue of the appellant. In that case, this Court upheld the order passed by the Tribunal on appreciation of the material produced before it, wherein it was opined that both the units are distinct and separate industrial units. The matter was examined in the light of the principles laid down in the **Associated Cement's** case ***(supra)***.

22. The mere fact that two Institutes, managed and controlled by the same management, offer different courses or were established at different times is not relevant for their clubbing under the EPF Act. The fact that one of the institutes receives 100% grant-in-aid from the

government while the other is receiving to the extent of 70%, is also not relevant. After coverage of the establishments, the benefits, as determined for the purpose of assessing dues under the EPF Act, have already been assessed by the Commissioner.

23. From a perusal of the material available on record and the settled position of law, it can be safely opined that there is financial integrity between the Society of the appellant as well as the Ideal Institute as substantial funds have been advanced to the Institutes by the Society. Further, both the Institutes are functioning from the same premises.

24. For the reasons mentioned above, the appeal is dismissed. There shall be no order as to costs.

.....J
(HIMA KOHLI)

.....J
(RAJESH BINDAL)

New Delhi
October 12, 2023.