



कर्मचारी भविष्य निधि संगठन  
(श्रम एवं रोजगार मंत्रालय, भारत सरकार)  
**EMPLOYEES' PROVIDENT FUND ORGANISATION**  
(Ministry of Labour & Employment, Govt. of India)  
मुख्य कार्यालय / Head Office  
भविष्य निधि भवन, 14-भिकाजी कामा प्लेस, नई दिल्ली-110 066.  
Bhavishya Nidhi Bhawan, 14, Bhikaji Cama Place, New Delhi - 110 066.

No. LC - 4(27)2017/KR/HC

Date:

To

All Regional P.F. Commissioners - I & II  
In-charge of Regional Offices

27 JUN 2017

**Sub: Forwarding of Judgement in WP(C) No. 27143/2005 filed by M/s Mangalam Publications(India) Pvt. Ltd. - regarding.**

Sir,

Please find enclosed herewith a copy of the Judgement dated 17-10-2016 passed by the Hon'ble High Court of Kerala in CWP No. 27143/2005(F) in the matter of M/s Mangalam Publications (India) Pvt. Ltd. V/s RPFC.

The Hon'ble court while dismissing the Writ Petition filed by M/s Mangalam Publications India Pvt. Ltd. has made the following observations "EPF Scheme is framed under a welfare legislation. If at all any doubt arises, interpretation need be made only in favour of the employee. Paragraph 26B does not provide for any limitation for undertaking an enquiry envisaged under the same". Further, Regional P.F. Commissioner is competent to determine the employee employer relationship and to determine whether a particular employee came under the definition of employee as defined under the Act.

A copy of the order is being circulated for information and implementation of this part of the order.

Yours faithfully,

Encl: As above

(Gyanendra Kumar)  
Assistant P. F. Commissioner (Legal)

- Copy to:
1. All ACCs -I&II (Zones).
  2. FA & CAO/CVO/All ACCs HQ.
  3. Director, NATRSS/ All Zonal Training Institutes.
  4. Director (Audit)/ All Dy. Directors (Audit).
  5. Dy Directores (Vig.)
  6. Hindi Cell for Hindi Translation.
  7. RPFC-II NDC.

Sr No. 6CRD  
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താഴെ : ബഹിഷ്യാനിധി  
ടൂൾ : 0471-2448143 (ബി.എ-1)  
ഫാക്സ് : 0471-2441750  
ടൂൾ : 0471-2446286  
കർമ്മവാരി ബഹിഷ്യാനിധി സംഗ്രഹം  
(ബി.എ. മന്ത്രാലയം, പാട്ടം സർക്കാർ)  
ദേശീയ കാര്യാലയം, "ബഹിഷ്യാനിധി ബഹവ്"  
പാട്ടം, തിരുവനന്തപുരം - 695004



Grams : "BHAVISHYANIDHI"  
TEL : 0471-2448143[RC(I)]  
FAX : 0471-2441750  
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പട്ടം-കോട്ടയം  
ബഹിഷ്യാനിധി "പ" ഘടനാ ബഹിഷ്യാനിധി  
(ബഹിഷ്യാനിധി ബഹവ്, പാട്ടം സർക്കാർ)  
ബഹിഷ്യാനിധി ബഹവ്, പാട്ടം സർക്കാർ  
പാട്ടം, തിരുവനന്തപുരം - 695004

EMPLOYEES' PROVIDENT FUND ORGANISATION  
(MINISTRY OF LABOUR AND EMPLOYMENT, GOVT. OF INDIA)  
REGIONAL OFFICE, KERALA  
"BHAVISHYANIDHI BHAVAN", PATTOM,  
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SPEED POST

No: KR/RO/TVM/ LC/ MISC-23/2017

Dated: - 3 APR 2017

To

The Central P.F.Commissioner,  
New Delhi.

By name to:  
Sri.Samarendra Kumar  
RC -I (Legal)

Sub: Forwarding of Judgment in WP (C) No. 27143/2005 filed by M/s  
Mangalam Publications(India)Pvt.Ltd-reg:

Sir,

The Hon'ble High court of Kerala in WP (C) No. 27143/2005 filed by M/s  
Mangalam Publications (India) Pvt. Ltd has upheld the power of the Regional  
Provident Fund Commissioner in determining the employee – employer relationship  
besides concluding whether a particular person engaged by the employer is an  
employee as per the Act.

Copy of the Judgment in said case is enclosed for information with a  
request to circulate it.

Yours faithfully

(RANJAY MOOSHAHARY)  
REGIONAL PF COMMISSIONER-I

Copy to:

1. ROs, Kochi & Kozhikode.
2. SROs, Kollam & Kannur
3. SRO, kottayam

- w.r.t letter No.KR/KTM/WP(C) 27143/2005/  
Enf I (7)/2017/6094 dated 14.03.2017





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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE SMT. JUSTICE P.V.ASHA

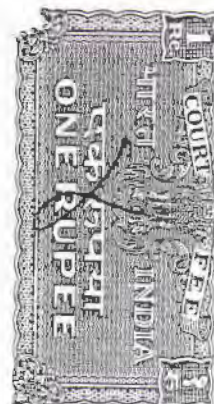
MONDAY, THE 17TH DAY OF OCTOBER 2016/25TH ASWINA, 1938

WP(C).No. 27143 of 2005 (F)

PETITIONER(S):

MANGALAM PUBLICATIONS (INDIA) PVT.LTD.,  
S.H.MOUNT P.O. KOTTAYAM 6,  
REPRESENTED BY ITS, DIRECTOR.

BY ADVS.SRI.U.K.RAMAKRISHNAN (SR.)  
SRI.E.K.MADHAVAN



RESPONDENT(S):

1. THE REGIONAL PROVIDENT FUND  
COMMISSIONER EMPLOYEES FUND ORGANISATION,  
SUB REGIONAL OFFICE, CHALAKKUZHI BUILDINGS,  
CMC COLLEGE ROAD, P.B.NO.36, KOTTAYAM 1.
2. ASSISTANT PROVIDENT FUND COMMISSIONER  
EMPLOYEES PROVIDENT FUND ORGANISATION,  
SUB REGIONAL OFFICE, CHALAKKUZHI BUILDINGS,  
CMC COLLEGE ROAD, P.B.NO.36, KOTTAYAM 1.
3. ISSAC PILATHARA, BETHEL HOUSE,  
P.O. PILATHARA, KANNUR 670 501.

R1 & 2 BY ADV. SMT.T.N.GIRIJA, SC,  
BY ADV. SRI.N.N. SUGUNAPALAN, SC,  
R3 BY ADV. SRI.PHILIP T.VARGHESE  
BY ADV. SRI.THOMAS T.VARGHESE

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD  
ON 17-10-2016, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:

bp

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P.V.ASHA, J.

W.P.(C) No.27143 of 2005

Dated this the 17<sup>th</sup> day of October, 2016

**JUDGMENT**

1. The Mangalam Publications (India) Pvt. Ltd. has filed this writ petition challenging the orders Exts.P4 and P5 by which the Regional Provident Fund Commissioner, after making an enquiry under paragraph 26B of the Employees' Provident Fund Scheme, 1952 (EPF Scheme for short) held that the 3<sup>rd</sup> respondent was eligible for membership under the EPF scheme with effect from 17.6.1986 to 31.7.1995 and from 1.5.1987 to 25.11.2000. Subsequently Ext.P5 order was issued correcting the period of eligibility for membership mentioned in Ext.P4 as with effect from 17.6.1986 to 31.7.1995 and from 1.5.1997 to 25.11.2000.
2. Petitioner challenges the orders Exts.P4 and P5 on the ground that the 3<sup>rd</sup> respondent had already left the petitioner as early as on 16.11.1998, receiving all the benefits and he had given Ext.P2 statement in writing that all his claims with petitioner were settled in full. According to the petitioner, he worked under it as Correspondent only as per Ext.P1 order issued on 26.5.1995 and after settling the claims as per Ext.P2 in the year 1998, he approached the 1<sup>st</sup> respondent for the first time in the year 2005.

The first respondent thereupon conducted an enquiry as in the case of an enquiry under Section 7A and without considering the objections and without considering the inability of the management to produce the records, it entertained the highly belated claim to the prejudice of the petitioner.

3. The 3<sup>rd</sup> respondent was appointed as a correspondent under the petitioner. He approached the Assistant Provident Fund Commissioner with Ext.P2(a) application alleging that the employer M/s.Mangalam Publications (India) Pvt. Ltd. who is the petitioner herein did not remit his Employees Provident Fund ('EPF' for short) contribution for the period from 1.9.1986 to 31.7.1995 and after deducting the PF contribution from his salary for the period from 1.5.1997 to 31.7.1998, he did not remit the same despite his repeated requests. Since objections were raised as to the authority of the Assistant Provident Fund Commissioner to consider the application, the matter was considered by the Regional Provident Fund Commissioner.
4. The petitioner submitted objections and additional objections as per Ext.P3, disputing the claim of the 3<sup>rd</sup> respondent. According to the petitioner, the 3<sup>rd</sup> respondent was appointed in the establishment only as per Ext.P1 order dated 26.5.1995 whereby he was



confirmed in service as Correspondent with effect from 1.6.1995, as per Ext.P1 order. It had remitted the statutory payments consequent to Ext.P1 order and the 3<sup>rd</sup> respondent did not have any right for membership to the EPF for a period prior to 26.5.1995.

5. The Regional Provident Fund Commissioner held an enquiry into the dispute. The 3<sup>rd</sup> respondent was examined in the enquiry and Exts. P1 to P19 documents produced on his behalf were marked. On behalf of the management, the Personal Officer of Mangalam Publications (India) Pvt. Ltd. and Sri.Babu Joseph, Unit Manager of Calicut Unit were examined as RW1 and RW2. Their objection was marked as Ext.R1.
6. Ext.P4 order was passed after considering the evidence on record and all the materials and contentions raised by the parties. In Ext.P4, the Regional Provident Fund Officer found that from the documents produced by the 3<sup>rd</sup> respondent, it was evident that the 3<sup>rd</sup> respondent was appointed as per order dated 17.6.1986 and by subsequent order he was assigned duty. Contrary to the statement of the employer, the name of the 3<sup>rd</sup> respondent was seen among the names of employees in official documents, which the management had produced in an enquiry under section 7A. The petitioner had contended that the documents relating to the

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W.P.(C) No.27143 of 2005

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employment of the 3<sup>rd</sup> respondent subsequent to 1995 only indicated that he was employed in M/s.Vyapara Vyavasayi Printing and Publishing Company. The 1<sup>st</sup> respondent found that the witnesses on behalf of the petitioner had not disputed the fact that the Vyapara Vyavasayi Printing and Publishing Company was doing the printing work for Mangalam daily also for certain periods. It was further found that petitioner's versions and statements given were contradictory. On analysis of the evidence on record, the Regional Provident Fund Commissioner arrived at the finding that the 3<sup>rd</sup> respondent was working under the petitioner from 1.9.1986 to 25.11.2000, till he was posted in Vartha Mangalam. Apart from the eligibility for membership, the 1<sup>st</sup> respondent found that the petitioner did not remit the contributions after deducting the same from the salary of the 3<sup>rd</sup> respondent for the period from 1.5.1997 to 31.7.1998. The 3<sup>rd</sup> respondent's name was found included in the list of employees under the petitioner as serial No.12 in Ext.P13 document, which was admitted to be an official document, which related to a period subsequent to 1998, whereas the version of the petitioner was that he left the service of the establishment after receiving all the benefits, on 16.11.1998. The 3<sup>rd</sup> respondent had further submitted an application dated 21.3.2012 in which he had

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alleged that the contributions were not remitted from 1.4.1987 to 31.7.1998 and he was denied employment from 1.3.2005 onwards. After referring to the documents, the 1<sup>st</sup> respondent found that the 3<sup>rd</sup> respondent was working under the petitioner till 25.11.2000. 3<sup>rd</sup> respondent had produced Ext.P15 by which he was directed to report in Vartha Mangalam from 14.12.2000 onwards. Accordingly it was found that he was in employment of or in connection with the work related to Mangalam Publications up to 25.11.2000. Repelling the contention of the petitioner that the allegation was raised after a long period, in the year 2000, with respect to the non remittance of contributions for the period from 1986, the 1<sup>st</sup> respondent stated that there was no period of limitation prescribed for an enquiry under paragraph 26B. It was thereafter the order Ext.P4 was passed and subsequently corrected as per Ext.P5.

7. The contention of the petitioner herein is that the 3<sup>rd</sup> respondent had already left the service in the year 1998 and Ext.P2 was given in writing to the petitioner stating that the 3<sup>rd</sup> respondent does not have any claim towards the service rendered by him and he received a sum of Rs.25,000/- (Rupees Twenty five thousand only) from the petitioner towards full and final settlement of all his dues. After receiving this benefit on 16.11.1998, it was for the first time



that the 3<sup>rd</sup> respondent approached the Assistant Provident Fund Commissioner with the complaint on 25.1.2005 and notice was issued to the petitioner thereafter.

8. The learned counsel appearing for the petitioner argued that at this distance of time, no action can be taken under paragraph 26B. It was also argued that the 1<sup>st</sup> respondent exceeded his jurisdiction by conducting an enquiry as under Section 7A and determined the provident fund amount due to be paid. The judgment of the Apex court reported in ***Hindustan Time Ltd. v. Union of India and others*** [1998 (1) LLJ 682] is also relied on in support of the contention that after a long period when the employer is not bound to preserve the documents in respect of the employment he cannot be put to prejudice by proceedings under the PF Act. The said judgment was in respect of the levying of damages against the Hindustan Times Ltd., where there was a delay of 14 years in initiating action and damages were levied on account of the delay in realisation of amounts paid by cheque where amounts were credited to the account of the department beyond the grace period of 5 days. The apex court found that there was no plea of any irretrievable prejudice in the reply to the show cause notice or in the writ and it was found that the said plea was not proved. In this case

also, apart from a statement that there was irretrievable prejudice to the petitioner, there is no explanation offered or evidence adduced to explain how irretrievable prejudice was caused to the petitioner.

9. The learned counsel for the 3<sup>rd</sup> respondent pointed out that Exts.P4 and P5 orders were passed after conducting an enquiry on the basis of the evidence adduced. Referring to the orders produced by the 3<sup>rd</sup> respondent as Exts.P1 to P19, the learned counsel pointed out that the 3<sup>rd</sup> respondent was under the employment of the petitioner right from 17.6.1986 and each of the orders of appointment and orders assigning duties as evident from Exts.P1 to Ext.P11 would show that the 3<sup>rd</sup> respondent was appointed on 17.6.1986 and in the first order of appointment itself the salary was fixed as Rs.700/-. This continued in the subsequent years and it was that appointment which was confirmed as per Ext.P1 order. It was also pointed out that the non remittance of the contribution after deducting the same for the period from 1997 to 1998 was also evident from the records. According to the 3<sup>rd</sup> respondent Ext.P2 was obtained from the petitioner on compulsion and he had produced all records to show that he continued in service under the petitioner and there was nothing illegal in Ext.P4. The learned counsel also pointed out that



Chapter X of the EPF Scheme deals with special provision in respect of newspaper establishments and newspaper employees. Paragraph 26b as provided under para 80 in Chapter X reads as follows:

*(b) Every newspaper employee employed to do any work, in or in relation to, any newspaper establishment to which this Scheme applies other than an excluded employee, shall be entitled and required to become a member of the Fund from the beginning of the month following that in which this paragraph comes into force in such newspaper establishment if on the date of such coming into force such employee is a subscriber to a provident fund maintained in respect of the establishment or in respect of another establishment to which the Act applies under the same employer.*

10. Therefore it is stated that the Mangalam Publications (India) Pvt. Ltd. to which provident fund scheme was made applicable from 1982, was liable to remit the contributions within 60 days of his employment. By virtue of the provisions contained in paragraph 80 under chapter X, the 3<sup>rd</sup> respondent was liable to be enrolled under the PF Act.

11. The learned counsel for the 1<sup>st</sup> respondent argued that there is no limitation for proceedings under paragraph 26B. In case there is a dispute with reference to the date of eligibility for membership that doubt can be resolved under 26B after conducting an enquiry and the 1<sup>st</sup> respondent had conducted the enquiry strictly in terms of the provisions contained in 26B. It is pointed out that subsequent to the orders passed under paragraph 26B the determination under section

7A was undertaken in separate proceedings and there was nothing illegal on the part of the 1<sup>st</sup> respondent in initiating the proceedings under paragraph 26B and the impugned orders are issued after conducting the enquiry and on the basis of the relevant materials. Learned standing counsel for the 1<sup>st</sup> respondent also relied on the judgment of this court in **Express Publication (Madurai) Ltd. v Regional provident Fund Commissioner-II** [2013 (2) KLT 323] wherein this court held that under paragraph 26B of the EPF scheme, the Regional Provident Fund Commissioner is empowered to decide the relationship of employer and employee between the parties. That was also a case involving a newspaper establishment. The issue which arose therein was regarding the employer employee relationship which was determined under paragraph 26B. It was held therein that paragraph 26B of the scheme presupposes the determination as to relationship between the parties.

12. After considering the contentions on either side and the provisions contained in paragraph 26B as well as paragraph 80 of the scheme, it is seen that Regional Provident Fund Commissioner has to decide the entitlement of a member either to continue under the scheme or to become eligible for the membership. Such decision shall be taken only after hearing the parties on either side. In this case the 1<sup>st</sup>



respondent has come to the conclusion that the 3<sup>rd</sup> respondent was liable to be included as a member from the date of his first appointment, which the 3<sup>rd</sup> respondent has produced as Ext.P1 before him and hence the entitlement of the 3<sup>rd</sup> respondent commenced on 17.6.1986. It is on the basis of the legal evidence and on the basis of the materials before the first respondent that Ext.P4 order, as corrected in Ext.P5 was passed. The first respondent has analysed the evidence in the correct perspective and it is only thereafter that the findings as to the entitlement of the 3<sup>rd</sup> respondent has been found. The contention of the petitioner that an enquiry as contemplated in section 7A was undertaken by the 1<sup>st</sup> respondent cannot be accepted, since Ext.P4 shows that the enquiry was only with respect to the eligibility of the 3<sup>rd</sup> respondent for membership under the Scheme under para 26B with reference to the orders of his appointment produced before the 1<sup>st</sup> respondent. Even though the learned counsel for the petitioner relied on the judgment of the apex court in *Hindustan Times Ltd's* case (supra), and argued that irretrievable prejudice was caused to the petitioner, on account of the delay, there is no material to come to the conclusion that any prejudice was caused to the petitioner on account of the delay. Therefore the judgment relied on by the

petitioner cannot help it.

13. Paragraph 26B reads as follows:

*26B. Resolution of doubts.—If any question arises as to whether an employee is entitled to, or required to become, or continue as, a member, or as to the date from which he is so entitled or required to become a member, the same shall be referred to the Regional Provident Fund Commissioner who shall decide the same:*

*Provided that both the employer and the employee shall be heard before passing any order in the matter.*

14. The enquiry conducted by the 1<sup>st</sup> respondent was perfectly within the scope of 26B and it cannot be said to be an enquiry under 7A or beyond the scope of paragraph 26B, as contended by the petitioner. In this context it is relevant to note the provisions contained in para 80 in Chapter X of the EPF scheme, which modifies the provisions contained in paragraph 26, 26A and 26B, etc of the EPF Scheme, under the special context. Clause 3 of paragraph 26 as modified under paragraph 80 of the EPF Scheme reads as follows:

*"80. Special provisions in the case of news paper establishments and news paper employees:*

*xxxxxx*

*(3): for para 26, the following shall be substituted, namely-*

*"26. Classes of employees entitled and required to join the fund-(1) (a)xxxx*

*(b)xxxx*

*(2)xxxxxxx*

*(3) after this paragraph comes into force in a newspaper establishment every newspaper employee thereof, other than an excluded employee, who has not become a member already shall also be entitled and required to become a member from the beginning of the month following that in which he completes 3 months continuous service or has actually worked for not less*



*than 60 days during a period of 3 months or less in that establishment or in another such establishment to which the act applies under the same employer or partly in 1 and partly in the other or has been declared permanent in any such newspaper establishment whichever is the earliest"*

15. The dispute was considered by 1<sup>st</sup> respondent under paragraph 26B under paragraph 80 of Chapter X which contains special provisions in respect of newspaper employees. EPF Scheme is framed under a welfare legislation. If at all any doubt arises, interpretation need be made only in favour of the employee. Paragraph 26B does not provide for any limitation for undertaking an enquiry envisaged under the same. As rightly contented by the learned counsel for the 1<sup>st</sup> respondent, relying on the judgment in ***Express Publications Ltd's*** case (supra) the 1<sup>st</sup> respondent is competent to determine the employee employer relationship and to determine whether a particular employee came under the definition of employee as defined under the Act. Therefore the impugned order Exts.P4 or P5 do not suffer from infirmity.

The writ petition fails and is accordingly dismissed.

Sd/-

**P.V.ASHA  
JUDGE**

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APPENDIX

PETITIONER'S EXHIBITS :

- P1: COPY OF THE LETTER OF APPOINTMENT NO.MP/PER/F/511 (C)/95-96 DT 26/5/1995 ISSUED TO THE R3.
- P2: COPY OF STAMPED RECEIPT DT 16/11/1998 EXECUTED BY THE R3. IN HIS HAND WRITING IN FAVOUR OF THE PETITIONER.
- P2(a): COPY OF THE COMPLAINT DT 25/1/2005 SUBMITTED BY THE R3 BEFORE THE R1.
- P3: COPY OF THE ADDITIONAL OBJECTION DT 28/6/2005 FILED BY THE PETITIONER BEFORE THE R1.
- P4: COPY OF PROCEEDING NO.KR/KTM/5975/289/FNF.I(1)/ 14//2005/5435 DT 14.7.2005/25.7.2005.
- P5: COPY OF CORRIGENDUM NO.KR/KTM/5975/289/ENF.I(1)/ 14/E/2005 DT 2.8.2005/3.8.2005.
- P6: COPY OF NOTICE NO.KR/KTM/5975/289/EFN.I(1)/ 14/E/2005/7818 DT 22/8/2005 ISSUED by the R2.

RESPONDENT'S EXHIBITS :

- 
- EXT.R1(a): COPY OF THE PROCEEDINGS NO.KR/KTM/5975/289/ENF.I (1)/14-E/2005/5435 DT 14/7/2005, ISSUED ON 25/7/2005.
- EXT.R1(b): COPY OF THE ORDER OF THE R1 DATED.
- EXT.R1(c): COPY OF THE PROCEEDINGS NO.M.P./APPLN/2413 DT 12.9.1987.
- EXT.R1(d): COPY OF THE ELIGIBILITY FROM 1.5.1997 TO 31/7/1998 BY THE R1.

//TRUE COPY//

*[Handwritten signature]*

P.A. TO JUDGE

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*(783) s.b*