FIFTY LANDMARK JUDGMENTS ON THE EPF & MP ACT, 1952

Fifty

Landmark Judgments on the

EPF & MP Act, 1952

मंत्री
श्रम और रोजगार
पर्यावरण, वन और जलवायु परिवर्तन
भारत सरकार

सत्यमेव जयते

MINISTER
LABOUR AND EMPLOYMENT
ENVIRONMENT, FOREST AND CLIMATE CHANGE
GOVERNMENT OF INDIA

भूपेन्द्र यादव
BHUPENDER YADAV

Message

It gives me great pleasure to introduce this compendium of "50 Supreme Court Judgments on EPF Act”. It is a testament of the commitment of the Narendra Modi government to provide a secure future for the workforce, ensuring that their contributions are safeguarded for retirement and times of need.

The EPF is a complex and multifaceted system, guided by intricate laws and regulations. Navigating this landscape can be challenging for both employers and employees. To this end, judgements of the Hon’ble Supreme Court have played a pivotal role in shaping and interpreting the various aspects of the Act.

These judgments have not only provided clarity but have also set significant precedents. They serve as guideposts for compliance, offering insights into eligibility criteria, withdrawal regulations, employer obligations, and employee rights. Each of these cases represents a milestone, helping both employers and employees.

I believe that this work will provide reliable reference material to all stakeholders, from employers seeking compliance to employees looking to understand their rights and obligations.

This compilation is a step towards our commitment to transparency and ease of access to the vast body of labour laws and regulations. We believe that by offering clarity and insight into the nuances of EPF matters, we can contribute to a more equitable and informed workforce.

I encourage you to make the most of this resource, to deepen your understanding of EPF laws, and to navigate the intricate terrain of EPF matters with confidence. The insights contained within this compendium will empower Bharat’s labour force to make informed decisions, secure their financial future ensuring continued prosperity.

I congratulate the authors of this publication and all others with whose hard work this work was made possible.

(भूपेंद्र यादव)

रामेश्वर तेली
Rameswar Teli
ৰামেশ্বৰ তেলী

सत्यमेव जयते

राज्य मंत्री
श्रम एवं रोजगार और
पेट्रोलियम एवं प्राकृतिक गैस
भारत सरकार
Minister of State for
Labour & Employment and
Petroleum & Natural Gas
Government of India

MESSAGE

The process of implementation of the Act and the Schemes inevitably gives rise to legal disputes of varied nature. The disputes are majorly related to applicability, assessment, damages, recovery and pension. In recent years, legal disputes related to Insolvency and Bankruptcy Code are also on the rise.

A robust and comprehensive legal management policy in any department is a must. It is appreciable that EPFO has framed its policy in the form of Legal Framework Document which is in sync with the vision of Draft Litigation Policy 2023 of Ministry of Law & Justice.

For defending the court cases properly, it is desirable to have a handbook consisting of important judgements on various issues so that the same can be cited appropriately by the concerned officers while defending the cases. It should be like a ready reckoner to the officers who will not have to struggle to find out the appropriate court cases when required. In this pursuit, EPFO has done a commendable job in bringing out this Compendium of '50 Landmark Judgments on EPF & MP Act'.

The compendium covers various important themes like applicability, compliance, recovery, penal damages, insolvency etc and will go a long way in guiding the officers of EPFO in properly defending the cases. A proper sincere defense of legal cases of the department leads to disposal of cases in favour of the Department, which effectively means successful defence of the interest of the workers.

The compendium is comprehensive, lucid and well structured. I appreciate the work done by the CPFC, the members of the editorial board and all other staff and officers who were associated in its publication.

27/10/23

(Rameswar Teli)

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Secretary to Govt. of India

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Message

I am happy to see this compendium of '50 Landmark Judgements on EPF Act'. This compendium is a testament to our collective commitment to upholding the rights and welfare of workers across the nation and is an important documentation of path breaking case laws that have defined the jurisprudence in the field of Social Security.

The Employees' Provident Fund and Miscellaneous Provisions Act 1952 stands as a cornerstone in the labour landscape of our country, safeguarding the social security and well-being of millions of workers. This compendium is a significant milestone in our efforts to implement provisions of the EPF&MP Act, safeguarding the rights of workers while providing ease of doing business to the vibrant entrepreneurial community of the nation.

I would like to encourage all our stakeholders to make the most of this valuable resource and use it as a reference in your pursuit of justice, fairness, and the protection of workers' rights. Let us work together to ensure that the EPF&MP Act is not just a set of laws on paper, but a living embodiment of our commitment to the welfare of our workforce.

I wish to congratulate everyone involved in bringing this compendium to fruition and I look forward to seeing it serve as a beacon of knowledge and insight in our ongoing journey to uphold labour standards and principles.

(Arti Ahuja)

Place : New Delhi
Dated: 27th October, 2023

नीलम शमी राव, भा.प्र.से.
केन्द्रीय भविष्य निधि आयुक्त
Neelam Shami Rao, IAS
Central Provident Fund Commissioner

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Message

It is with great pleasure and a sense of pride that I present this compendium of '50 Supreme Court judgments on the EPF & MP Act'. The EPF & MP Act is a cornerstone of social security for the working population in our country, and it is essential to have a comprehensive understanding of the legal aspects surrounding it.

This compendium of the decisions rendered by the apex court have contributed to the protection of the rights and interests of employees and employers alike.

The EPF & MP Act, as an instrument of social security, is a subject that touches the lives of millions of workers and employers across the nation. Through this compilation, it is aimed to provide a valuable resource for legal practitioners, scholars, and all stakeholders in the labour and employment sector. These judgments offer insights into the nuances of EPF law, pivotal precedents, and the evolving legal landscape.

This compendium reflects EPFO's commitment to promoting knowledge, understanding, and responsible compliance of labour laws. I extend my gratitude to all those who have contributed in the compilation of this compendium. I am sure that this compendium serves as a valuable reference and fosters a deeper comprehension of EPF legislation and contributing to a more equitable and just working environment for all.

(Neelam Shami Rao)

Place: New Delhi
Dated: 30th October 2023

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Abbreviations

AIR	All India Reporter
CoC	Committee of Creditors
CIRP	Corporate Insolvency Resolution Process
Cr. P.C	Criminal Procedure Code, 1973
EPF Act	The Employees' Provident Funds and Miscellaneous Provisions Act, 1952
I & B Code	Insolvency and Bankruptcy Code, 2016
I.P.C	Indian Penal Code
LLJ	Labour Law Journal
NCLT	National Company Law Tribunal
NCLAT	National Company Law Appellate Tribunal
PSARA	The Private Security Agencies (Regulation) Act, 2005
RP	Resolution Professional
RPFC	Regional Provident Fund Commissioner
SC	Supreme Court
SCC	Supreme Court Cases
SCC (L&S)	Supreme Court Cases (Labour & Services)
SCR	Supreme Court Reports
SCJ	Supreme Court Journal
SICA	Sick Industrial Companies (Special Provisions) Act, 1985
SLP	Special Leave Petition

INTRODUCTION

Over the years, the Supreme Court of India and the High Courts has elucidated and broadened the scope of various provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, so that the objectives behind the statute are furthered. It has helped to give the working class a robust social security base. It has rendered significant judgments that delineate these rights. This effort is aimed at ensuring more vital adherence to social security standards.

For example, the Supreme Court, in the *P.M. Patel and Sons* case, highlighted the importance of a broad understanding of the term' employee.' The court ruled that home workers are encompassed within this definition, affirming the rights and benefits due to these workers. This approach signifies the judiciary's willingness to interpret social justice and workers' rights laws expansively. They transcend literal interpretations of legal language to ensure these laws effectively benefit society. This interpretative stance serves to extend the scope of social welfare laws, thereby fortifying the rights and safeguarding of the working class.

This handbook delves into 50 landmark judgments by the Supreme Court and High Courts that deal with the various provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

This handbook aims to distil the Court's legal interpretations by offering case summaries that clearly outline the existing legal stances. Additionally, it contextualises each case's precedents within a broader legal framework. This resource is designed to assist the officers, officials, and others gain a comprehensive and accessible understanding of the Court's jurisprudence concerning the Provident Fund law.

While the cases presented in this handbook represent significant jurisprudence on these issues, it is essential to note that this compilation is not intended to be an exhaustive or comprehensive list of the jurisprudence on the subject.

APPLICABILITY & COMPLIANCE

ANDHRA UNIVERSITY VS REGIONAL PROVIDENT FUND COMMISSIONER

1986 AIR 463 SC

The short question for consideration before the Supreme Court in this matter was whether the printing press run by the appellant university, as a part of its academic requirements, would qualify as a factory and, as a consequence thereof, be covered under the EPF Act.

The Regional Provident Fund Commissioner, Andhra Pradesh, had directed the Andhra University to comply with provisions of the Act in respect of its 'Publications and Press Department', which catered to its printing requirements. The RPFC was of the view that the printing press was a factory engaged in printing and, therefore, answered the description of the first schedule to the EPF Act. The action was challenged before the Andhra Pradesh High Court, a division bench which upheld the RPFC's action and held that the stated department qualified as a factory and was correctly covered under the EPF Act.

The university further contested the matter in the Supreme Court. It was held that the purpose of the Act was beneficial, meriting a liberal interpretation of its provisions. The Court observed that the printing press of the university squarely answered the description of a factory in the printing business, and the Act was correctly applied to it. Consequently, the action of RPFC, approved by the Andhra Pradesh High Court, was further upheld.

The Daily Pratap vs The Regional Provident Fund Commissioner Punjab Haryana, Himachal Pradesh and Union Territory, Chandigarh
AIR 1999 SC 2015

The common question which came into consideration before the Supreme Court in two appeals under Article 136 of the Constitution of India was "whether the appellants who were carrying on the business of printing and publishing newspapers in the State of Punjab at Jallandhar were liable to remit contributions under Section 6 of the EPF Act along with the matching contributions from their respective employees, on the amounts paid by the appellants to their employees under identical schemes of Production Bonus. These appeals were filed as the Division Bench of the High Court of Punjab & Haryana at Chandigarh confirmed the view of the learned Single Judge that the said statutory liability is foisted on the appellants by summarily dismissing the Letters Patent Appeals.

The appellants were printing the newspapers in Jalandhar in the State of Punjab and circulating them to their customers. They allegedly had not remitted their contributions along with the share of their concerned employees on the Production Bonus paid to their employees. The appellants' contention before the High Court was that as the disputed amounts were paid to the concerned employees under the relevant Production Bonus Schemes, they were not liable to remit contributions for the same as per Section 6 of the Act. The then-learned Advocate General for the State of Haryana conceded before the High Court that the appellants were not required to deposit the provident fund on the Production Bonus and the appellants may deposit provident fund only on "wages" as defined in the Act and concerning the refund of the amount deposited in respect of Production Bonus, the appellants may apply to the respondent authorities, who, after giving them hearing, would decide the matter within three months. After that, the respondent authorities gave a hearing to the appellants and ultimately took the view that the disputed amounts for which contributions were asked for under Section 6 of the Act from the appellants were part of the "basic Wages" and no such Production Bonus Scheme was existing in the appellants' concerns. Consequently, the appellant's claim for non-application of Section 6 of the Act of these disputed amounts was rejected. This issue was decided against the appellants as mentioned supra in Para 1, in the Letters Patent Appeal, resulting in special leave to appeal under Article 136 of the Constitution of India.

The appellants resorted to a two-pronged approach to defend their case before the Supreme Court. The first prong of its attack was that according to the High Court's earlier order in writ petitions, the only inquiry to be conducted by the authorities under the Act was about the appropriate amount of refund to be given to the appellants. The learned Advocate General for the State of Haryana had conceded that the appellants were not required to deposit such provident fund on the Production Bonus. Consequently, the authorities had no jurisdiction to go behind these orders of the High Court and decide the question on merits once again and held that the appellants were liable to deposit the provident fund amount on the Production Bonus they paid to the workers concerned. The second prong of the attack was that even assuming that the authorities could go into this question despite the order of the High Court, they still committed a patent error of law in taking the view that the scheme in question was not a Production Bonus Scheme and that the amounts paid for extra work rendered by the workmen were covered by the definition of "basic wages" under Section 2(b) of the EPF Act.

The respondents argued that the Act is a beneficial piece of legislation. Thus, the Act, which envisages a protective economic cover for the rainy day so far as these workmen, should be construed liberally and not in a restrictive manner. The respondents contended that the High Court had taken the view that the Scheme pressed in service by the appellants was not a genuine Production Bonus Scheme but was merely an attempt to get out of the provisions of Section 6 of the Act. It was also submitted that earlier orders of the High Court did not deprive the authorities of statutory jurisdiction to decide the fundamental nature of the so-called Production Bonus schemes.

The Supreme Court held that the Advocate General's concession was on a question of law as to whether the Scheme which was put forward by the appellants as a Production Bonus Scheme was covered by Section 6 read with Section 2(b) or not. Such a concession on the question of law cannot bind the authorities for all time to come. It was further held that while conceding that the appellants were not required to contribute to Production Bonus amounts, it was made clear by the learned Advocate General that they had to deposit provident funds on the "wages" as defined under the Act. This meant that whether the disputed amounts for which the refund was to be claimed by the appellants from the authorities fell within the definition of "wages" under the Act or not was a live issue. Therefore, the statement of the learned Advocate General before the High Court had no adverse effect on such a statutory jurisdiction of the authorities.

While deciding the main controversy it was held by the Supreme Court that:

> It has to be kept in view that the Act in question is a beneficial social welfare legislation meant to protect weaker sections of society, namely, workmen who had to eke out their livelihood from the meagre wages they receive after toiling hard for the same. We may usefully refer to the observations of a two-judge Bench decision of this court in Regional

Provident Fund Commissioner vs. S.D. College, Hoshiarpur & Ors. (supra), wherein it has been observed in para 10 of the Report that:

"[...] The Act is a beneficial welfare legislation to ensure health and other benefits to the employees. The employer under the Act is under a statutory obligation to deduct the specified percentage of the contribution from the employee's salary and matching contribution, and the entire amount is required to be deposited in the fund within 15 days after the date of the collection, even a month.

The Supreme Court, while deciding the main issue after analysing the definition of basic wages as given in section 2(b) of the Act and the nature of the Production Scheme relied upon by the appellant, held that this scheme of paying extra remuneration to more eligible and efficient workers was a scheme of super wage fixation and is not a genuine scheme of incentive bonus which had to be earned by the workers by showing their capabilities for earning such extra bonus linked up with the quantity of extra production. It was held that the critical component of a genuine Production Bonus scheme is that the payment by way of bonus to the concerned eligible workers should vary in proportion to the extra output put up by him beyond the norm of the production prescribed for him. And this facet was conspicuously absent in the scheme relied upon by the appellants. Only one aspect was common between the genuine production incentive scheme and the scheme under consideration, viz., that the workman could not have been compelled to carry out extra work, but it was found insignificant. The Supreme Court specifically observed that the scheme in question does not fulfil the criteria laid down for a genuine production bonus scheme discussed in either of the judgments of this Court in *Bridge & Roof Co. (India) Ltd. vs Union of India* case or in *Jay Engineering Works Ltd. and others. vs The Union of India and others* case. Therefore, the appeals failed, and the appellants were directed to pay provident fund on production bonus, considering it as part of the basic wages.

Regional Provident Fund Commissioner Vs Sanatan Dharam Girls Secondary School and Others

(2007) 1 SCC 268

The issue which the Supreme Court of India had to decide in this case was "whether the provisions of EPF Act, 1952 (The Act) were applicable to the Non-Governmental Educational Institutions (governed by 'The Rajasthan Non-Government Educational Institutions Act, 1989' (the State Act) which came into force from 01.01.1993) or not because of the provisions contained in Section 16 (1) (b) of the Act?"

Whereas vide Gazette notification issued in 1982 by the Central Government, Educational Institutions were added to the Schedule of the Act under section 1(3) of the Act, thus making the Act applicable to (i) any University, (ii) any college whether or not affiliated to a University (iii) any school, whether or not recognized or Aided by the Central or State Government (iv) any scientific institution (v) any institution in which research in respect of any matter is carried on and (vi) any other institution in which the activity of imparting knowledge or training is systematically carried on.

Thus, the notification in relatively unambiguous terms made the Act applicable to all educational institutions. The argument of the appellants (which in this case was RPFC) was that the Act would apply to all Educational Institutions employing 20 or more employees during the period before coming into force of the State Act and continue to be applicable even after that as these Educational Institutions were running and were managed by registered societies and none of them are owned or managed by the State Government. It was contended that merely on the basis of recognition under the State Act of 1989, it could not have been held that these Educational Institutions were under the control of the State Government as required under section 16 (1) (b) of the Act. Accordingly, the findings of the learned single Judge and the Division Bench of the Rajasthan High Court were challenged on the ground that they had wrongly recorded that all Educational Institutions are under the control of the State Government as they are recognized by the State Act of 1989. The only exception to this being acceptable to the Appellants was that only the Educational Institutions whose management had been taken over by the State Government under section 10 of the State Act, 1989 should fall within the exception under section 16 (1) (b) of the Act. It was also argued that the High Court did not consider that the Central Act is more beneficial for the employees than the State Act as there is a compulsory pension scheme, called "The Employees' Pension Scheme, 1995" under the Central Act.

The respondent, in this case, was the State of Rajasthan, and they contended that after the enactment of the State Act of 1989, the said Act occupied the field concerning the deposit of PF of the employees of Non-Government Institutions and it overrides the provisions of the Act. Thus, it was clear that the Educational Institutions were outside the purview of the Act in view of section 16(1)(b) of the said Act.

The educational institutions also appeared as interveners and argued that the State Act of 1989 had received Presidential assent; therefore, the said Act would prevail over the Central Act in the State of Rajasthan as per the provisions of Article 254(2) of the Constitution of India.

While interpreting the provisions as stipulated under Section 16(1)(b) of the Act, the Supreme Court held that in order to be covered under the exception to the EPF Act, 1952 stated above, the following two conditions have to be satisfied by the establishment seeking to be exempted from the provisions of the EPF Act, 1952: 1) It must be an establishment belonging to or under the control of the Central Government or a State Government and 2) It must be an establishment 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."

Therefore, it was opined by the Supreme Court that the two words, i.e., "belonging to or (b) under the control of" used in the said Section have different connotations. The words "belonging to" signifies ownership, i.e., the Government-owned institutions would be covered under the said part and the words "under the control of" signifies control other than ownership since ownership has already been covered under the words "belonging to". It must also be noted that the word separates the two words "OR"; therefore, they refer to two mutually exclusive categories of institutions. While the institutions "belonging" to the Central or the State Government would imply the control of the State, privately owned institutions can be "under the control of" the Government in various ways. Thereafter, after noting the various ways of control available to the State Government in the State Act of 1989, the Supreme Court stated that:

> "In our view, the State Act is a complete code in itself with regard to the educational institutions, and the State Government exercises substantive control over the institutions even though the institutions are not "owned" by it. The word "control" has not been defined under the EPF Act 1952. However, this Court in *Shamrao Vithal Coop. Bank Ltd. vs Kasargode Panduranga Maliya*, (1972) 4 SCC 600 at page 604 has cited with approval the meaning of the word "control" as it appears at page 442 of Words & Phrases Vol.9, Permanent Edition as under: "The word "control" is synonymous with superintendence, management or authority to direct, restrict or regulate.

In the case of *State of Mysore vs. Allum Karibasappa*, (1974) 2 *SCC* 498 at page 501, this Court defined the words “word control” as under: “The word “control” suggests check, restraint or influence Control is intended to regulate and hold in check and restrain from action.”

It was, therefore, held that the State Government had the power of Superintendence or the authority to direct, restrict or regulate the working of the educational institutions. Consequently, it was held that the stated educational institutions satisfied both the conditions (i) and (ii) mentioned above, and as such, they would fall within the exception contained under Section 16(1)(b) of the EPF Act, 1952.”

DISTRICT EXHIBITORS' ASSOCIATION MUZAFFAR NAGAR AND OTHERS VS UNION OF INDIA AND OTHERS

1991 AIR 1381

The Judgment of the Court was delivered in Civil Appeal Nos. 998 and 999 of 1991 filed against the judgment dated 1st March 1990 of the Division Bench of the Allahabad High Court, whereby the Allahabad High Court dismissed the writ petitions filed by the District Exhibitors Association, Muzaffarnagar and others as well as some other Theatres upholding the Notification dated 30th April 1986 issued by the Central Government under Section 5 read with sub-section (1) of Section 7 of the EPF Act.

The dispute arose as Section 24 of the Cinema Theatre Workers (Regulation of Employment) Act, 1981 (hereinafter referred to as `the Cinema Theatre Workers Act), which came into force with effect from 1st October 1984, provided that the provisions of the Act shall apply to every cinema theatre in which five or more workers are employed on any day, as if such cinema theatre were an establishment to which the Act had been applied by a notification of the Central Government under the proviso to sub-section (3) of section 1 thereof, and as if each such worker were an employee within the meaning of that Act. A notification dated 30.04.1986, in exercise of the powers conferred by Section 5 read with Sub-section (1) of Section 7 of the Act, was issued by the Government of India, making Section 24 of the 'Cinema Theatre Workers Act applicable retrospectively with effect from 1st October 1984. Before the High Court, the main arguments raised by the appellants were:

a) The Notification dated 30th April 1986 was ultra vires of the provisions of the Act in as much as the Central Government could not extend the scheme to an establishment which is neither an industry nor a notified establishment under Section 3(b) of the Act;

b) There was no liability under the Scheme framed by the Central Government to contribute to the provident fund in respect of the employees who ceased to be cinema employees before the Provident Funds Act came into force on 30th April 1986; and

c) The demand of the Provident Funds Commissioner from the employers about the arrears of contribution even for the pre-discovery period, i.e., the date from which the scheme became applicable to employers, leads to hardship and injustice and, therefore, violates Article 14 of the Constitution.

The Views of the High Court: The High Court, while dealing with these submissions, took the view that Section 24 of the 'Cinema Theatre Workers Act' has applied the provisions of the Act to every cinema theatre in which five or more workers were employed on any day as if such cinema theatre were an establishment to which the provisions of the Provident Funds had been applied by a Notification of the Central Government under the proviso to clause (b) of sub-section (3) of Section 1 of the Provident Funds Act. As per the High Court, the view that only those employees who were in employment on 30th April 1986 and had not ceased working in a cinema in respect of whom the benefit was being claimed could be entitled to get the benefit of the scheme.

In the notice, the demand of contribution was sought under the Scheme for the employees working on 30th April 1986 with effect from 1st October 1984. The High Court took the view that since the demand was made for the employers' contribution in respect of the employees working on 30th April 1986, it was wrong to argue that the scheme was being incorrectly applied. Those workers who had left the cinema and had ceased to be its workers on 30th April

1986 would certainly not be entitled to any benefit under the scheme. Regarding the challenge to the demand by the Provident Fund Commissioner from the employers about the contribution arrears, the High Court felt there was no substance in that argument.

Arguments before the Supreme Court:

(i) that the Act would not be applicable so long as the Notification as required by the proviso to Section 1(3)(b) has not been issued;

(ii) even if it is assumed that Section 24 of the Cinema Theatre Workers Act takes the place of a Notification being issued as contemplated by the proviso to Section 1(3)(b) of the Act, an express Notification under Section 5 is required to make the scheme applicable to those establishments and without such a Notification the scheme will not be applicable:

(iii) that under Section 6 of the Act, the liability is only fixed for employers' share of contribution towards Provident Funds, and there is no liability fixed to pay employees' share, and unless paragraph 30 of the scheme is made applicable there is no inability of the employers to pay employees' share; and

(iv) that the Notification is very harsh and unjust as the appellants are being asked to pay the contribution of the employees' share to the Provident Fund Account retrospectively without the corresponding right of the employer to recover it from the employees' wages.

The decision of the Supreme Court:

(a) A bare reading of Section 24 of the Cinema Theatre Workers Act shows that it has fulfilled the purpose of the Notification which the Central Government could have issued under Section 1(3)(b) of the Provident Funds Act read with the proviso. Therefore, no further Notification contemplated by Section 1(3)(b) of the Act was necessary. Thus, the Act became applicable to the theatres that employ five or more workers from 1st October 1984. Again, because of Section 6 of the Provident Funds Act, noticed earlier, the employers became liable to pay their contribution to the fund as soon as the Act came into force, i.e. w.e.f. 1st October, 1984.

(b) It is also clear from reading Section 5 of the Act that before the Provident Funds Scheme can become applicable, the Central Government has to frame a Scheme and specify the establishment to which the Scheme shall apply. Until the impugned Notification dated 30th April, 1986 was published, the Scheme was not applicable to such cinema theatres employing less than 20 employees. It became applicable to cinema theatres employing five or more workers only when the impugned Notification was issued under Section 5 of the Act. The provisions of Section 5(2) of the Act and Section 7(1) of the Act confer express powers of making the Scheme applicable retrospectively.

(c) As no Scheme was applicable for the period from 1st October 1984 up to the date of the impugned Notification, the employer had paid the full wages to the employees during that period, i.e. without making any deductions as contemplated under the Provident Fund Scheme. By retrospectively applying the scheme, the employer could not be asked to pay the employee’s contribution for the period antecedent to the impugned notification. The Act and the Scheme neither permit any such payment nor deduction.

The Regional Provident Fund Commissioner Vs Central Arecanut & Cocoa Marketing and Processing Co-operative Limited

(2006) 2 SCC 381

The appeal was filed to challenge the judgment of the Division Bench of the Karnataka High Court. The Division Bench held that the EPF Act did not cover 45 persons selected as trainees, as they cannot be called "employees" as defined under Section 2(f) of the Act.

The respondent invited applications for undertaking training on a stipend to be increased after six months. It was provided that successful candidates may be considered for regular posting. An inquiry under Section 7-A was conducted, and the appellant held that the trainees were employees for the purpose of the Act, and the respondent was liable to pay the quantified amount.

The respondent relied on the definition of 'employee' in Section 2(f) of the Act. The respondent argued that Section 12-A of the Standing Orders Act manifests that until the Standing Orders are finally certified and come into operation, the prescribed model standing orders shall be deemed to be adopted in the concerned establishment. The Apprentices Act defines an 'apprentice' as a person undergoing apprenticeship training in pursuance of a apprenticeship contract.

The Court heard both the parties. Section 12-A of the Standing Orders Act, Section 2(f) of the EPF Act and Section 2(aa) of the Apprenticeship Act were considered.

In the instant case, the Standing Orders were not certified at the relevant point of time. Therefore, in Section 12-A of the Standing Orders Act, Model Standing Orders are deemed applicable. Section 2(f) of the EPF Act includes an apprentice but also excludes apprentices engaged under the Apprentices Act or the Standing Orders. Under the Model Standing Orders, an apprentice is described as a learner who is paid an allowance during the training period.

The Court observed that in the instant case, trainees were paid a stipend during the training period and had no right to employment nor any obligation to accept any employment if offered by the employer. Therefore, the trainees were 'apprentices' engaged under the 'Standing Orders' of the establishment. This being the position, it cannot be said that the concerned 45 trainees were employees in terms of Section 2 (f) of the Act. Accordingly, the appeal is dismissed.

P.M. Patel & Sons vs Union of India

1986 SCC (L&S) 926:1987 AIR 447: 1985 SCR Supl (3) 55

In a writ petition under Article 32 of the Constitution, the petitioners challenged the validity of a notification issued by the Central Government under section 1(3) of the EPF Act, applying its provisions on the establishments engaged in manufacturing beedis.

Through the stated notification dated 17 May 1977, the Central Government added the Beedi industry to Schedule I of the Act, followed by another notification on 23 May 1977 applying the Act to the stated industry from that date. Both notifications were challenged for their legal and constitutional validity.

The beedi industry, at the relevant time, engaged three kinds of employees – regular employees who worked as clerical staff in the factory premises, workers who attended the factory or manufacturing utility for the rolling of beedis and home-workers who were engaged through contractors (*Sattedars*) who would collect the raw material from the factory and return the finished product after rolling the beedis at their homes. Such home-workers were paid on a piece-rated basis in distinction with regular workers engaged on a pay structure.

The contestation before the Court was that the home workers, who constituted most of the workforce with the beedi industry, would not qualify as employees under the Act. It was argued that no employee-employer relationship existed between the home-workers and the beedi manufacturer and that the Act could not be made applicable to the beedi industry as there was no retirement age for the home-workers.

The Court held that the right of rejection available to the manufacturer to reject the finished product was a sufficient degree of control to establish an employee-employer relationship between the home-worker and the beedi manufacturer. It was held, therefore, that the home workers engaged through *Sattedars* would qualify as employees under the Act and would be entitled to the social security benefits contemplated thereunder.

Shri Vishal Printers Ltd vs Regional Provident Fund Commissioner

2019 SCC Online SC 1179

That a company is a separate legal entity is a well-established principle in company law (*Salomon v A Salomon & Co Ltd* [1896] UKHL 1). However, in welfare legislations like labour laws, the separate entity concept takes a backseat to ensuring individual workers' rights. One such area is the definition of "establishment" under the EPF and MP Act. The word "establishment" is not defined in the Act, but the jurisprudence evolved under the Industrial Disputes Act. The present judgment dealt with the concept of establishment and its relevance in interpreting section 2-A of the EPF Act.

The case arose when three limited companies, namely, M/s Bennet Coleman & Company Ltd, Jaipur (hereinafter referred to as 'BCCL'), M/s Times Publishing House Ltd, Jaipur (hereinafter referred to as 'TPHL') and M/s Shree Vishal Printers Ltd, Jaipur (herein after referred as 'SVPL') applied for exemption under section 16(1)(d) of the Act, which dealt with the exemption of new establishments from the ambit of EPF act for three years from the date of its setup(commonly known as Infancy period exemption). RPFC had denied exemption because they are all effectively part of the same parent establishment, M/s Bennet Coleman & Company Ltd, Mumbai (Section 2-A). The establishments had challenged the order before EPFAT, the Single judge bench, and the Division bench of the High Court, who all upheld the decision of RPFC.

TPHL had an agreement with BCCL to publish the Jaipur edition of the daily newspapers of BCCL. For this, TPHL opened an office with all infrastructure, administrative, secretarial staff, trained manpower and office space to BCCL. The agreement stated that the manpower would carry out the instructions of BCCL.

The petitioners placed heavy reliance on a landmark case under the Industrial Disputes Act, namely *Management of Pratap Press vs Secy, Delhi Press Union* [AIR 1960 SC]. While discussing various tests for ascertaining actual relations between branches/Units, the above judgment held that the test of "functional Integrality" is the most important. That is the extent of the functional interdependence of the two units, where one unit cannot exist conveniently and reasonably independent of the other. The second judgment relied upon for this purpose was in *L.N. Gadodia & Sons and another. vs. Regional Provident Fund Commissioner*. This case addressed whether two sister concerns, having different dates of incorporation, could be treated as two separate establishments.

Further, the petitioners vehemently argued that TPHL and BCCL are two different legal entities, with no commonality in directors or shareholders and no financial unity. Also, the two companies have different sets of employees with no transferability.

The respondent EPFO argued that the two entities are functionally dependent. It was argued that all three entities were functioning in the same building, and employees of BCCL were signing papers on behalf of THPL. It was also emphasized that the executives of THPL were using the letter pad of BCCL.

The Supreme Court observed that the nature of the agreement providing space, staff and control by THPL to BCCL to the extent of the letter pads being used without due regard to the entity for which it ought to be used was an attempt to keep the units segregated for labour law ramifications. Accordingly, the court observed 'functional integrality' between THPL and BCCL and held they are part of the same establishment.

SVPL had entered into a contract with BCCL to publish the Jaipur edition of the two newspapers on a contract basis. Even though the printing press was elsewhere, the business office of SVPL was in the same building as BCCL and TPHL. It is a fact that SVPL was doing an exclusive contract for BCCL during the period in which it claimed exemption. However, there is a non-exclusivity clause in the agreement which allowed SVPL to take up the works of other entities.

The petitioners emphasized the non-exclusivity clause and that the two entities were registered separately under the Companies Act with no commonality of directors/shareholders. Also, it was contended that the printing press was located in a different place. However, it was not disputed that space was leased out to BCCL by SVPL adjacent to the printing press for newspaper storage.

EPFO argued again on the same lines as in the petition of TPHL and insisted on the functional integrality of both entities. It was observed that BCCL was issuing letters on the letter pad of SVPL.

Based on the above arguments, the court held that all three companies were working together with a common object of bringing out the newspaper and relied on the test of 'functional integrality' to decide that all of them formed a part of the same establishment.

SAYAJI MILLS LTD. VS REGIONAL PROVIDENT FUND COMMISSIONER

1985 AIR 323, 1985 SCR (2) 516

The Court set aside the ingenuities by an employer to deprive the employees of all the benefits conferred upon them by the statute and reaffirmed that the EPF Act should be construed so as to advance the object with which it is passed and any construction which would facilitate evasion, should be avoided.

The appellant purchased 'Hirji Textile Mills' in a sale held by the Official Liquidator under the orders of the Bombay High Court. The appellant invested some fresh capital in the business, renovated the machinery and employed workmen on fresh contracts in which 70% of the workmen were formerly working in the factory. The factory commenced its production with effect from November 12, 1955, after obtaining a new licence to produce new types of goods to run it. In February 1956, the Regional Provident Fund Commissioner made certain enquiries about the working of the factory in order to enforce the provisions of the EPF Act. The appellant informed that the factory was an infant factory and the period of three years had not elapsed from that date within the meaning of Section 16(1)(b) of the Act and claimed exemption from the applicability of the Act.

The appellant filed a suit before the City Civil Court at Bombay for a declaration that the Act cannot be enforced against the factory until the expiry of the infancy period as required under the statute.

The Respondent resisted the submission of the establishment and contended that the Act was applicable to the factory, which was very much in existence even before the change in ownership and does not qualify for the infancy period as required under Section 16(1)(b) of the EPF Act. The trial court dismissed the suit with costs. The Bombay High Court affirmed the judgment of the Act. The appellant filed an appeal against the judgment of the High Court.

The Court heard both the parties. The court observed that the EPF Act had been brought into force in order to provide for the institution of provident funds for the benefit of the employees in factories and establishments. Therefore, the Act should be construed so as to advance the object with which it is passed. The Act being a beneficial statute and section 16 of the Act being a clause granting exemption to the employer from the liability to make contributions, Section 16 should receive a strict construction.

The Court considered the submissions of both parties and rejected the contention of the appellant that the establishment is a new factory. The Court held that there is no change in the status of the factory either due to interruptions or due to a change in ownership. The Court dismissed the appeal with costs.

PAWAN HANS LIMITED AND OTHERS VS AVIATION KARAMCHARI SANGHATAN

[Civil Appeal No.353 of 2020]

Pawan Hans Limited is a company with the Government of India holding a share of 51%. The company had 840 employees on its rolls, of which 270 were enrolled on a 'contractual' basis. The company has instituted a provident fund trust to provide provident funds for its employees and framed the 'Pawan Hans Provident Fund Trust Regulations' (hereinafter referred to as PF Trust regulations). The provisions of the regulation stated that the rules contained therein would apply to all the corporation's employees. An employee was defined as:

> Employee means any person who is employed for wages/salary in any kind of work, monthly or otherwise, in or in connection with the work of the corporation and who gets his wages/salary directly or indirectly from the corporation and excludes any person employed by or through a contractor or in connection with the work of the corporation but does not include any person employed as an apprentice or trainee.

The company implemented the PF trust regulations only for their regular employees even though the above definition of 'employee' included persons engaged directly or indirectly. Further, the company claimed exemption under section 16 of the EPF Act.

Subsequently, the Central Government issued a notification under section 1(3)(b) in 2001 notifying a scheduled head, "*An establishment of aircraft or airlines other than the aircraft airlines owned or controlled by the Central or State Government.*" The respondent union represented the company to extend the benefit of PF Trust regulations as the company directly employs them and has been working for a long time. The company did not respond to the representation.

Aggrieved, the union filed a writ petition in the High Court with a prayer to direct either the company to extend the benefits of PF Trust regulations or extend the benefits under the EPF and MP Act. High Court, taking a liberal interpretation, directed the company to enrol the contractual employees under the EPF Act from the date of their joining till they are employed. The company approached the Supreme Court against the order of the High Court.

The petitioner company argued that the notification of the scheduled head itself had excluded the airlines owned or controlled by the central government, and since the Central Government has a 51% stake in the company, it is out of the purview of the EPF Act. Further, the company's Board of Directors are appointed by the Ministry of Civil Aviation and is governed under the guidelines issued by the Department of Public Enterprises. Secondly, the petitioner contested the retrospective application of the EPF Act, given that many workers have superannuated, resigned or died.

The respondent union contended that these contractual workers were directly engaged by the company and hence covered under the definition of the 'employee' in the PF Trust regulations. Also, they are covered under the definition of 'employee' under the EPF Act. Also, since the Board of Directors controls the company and not the central government, it is covered under the notified scheduled head.

The Supreme Court relied on the judgment of *RPFC vs Sanatan Dharm Girls Secondary School* [(2007) 1 *SCC* 268)], where a twin test was laid down to check whether an establishment was exempted from the purview of the EPF Act. The first test of whether the establishment was 'owned by or under the control of the Central Government' was satisfied in this case, as 51% of the shares were held by the Central Government. The second test is the question as to whether the employees are entitled to a contributory provident fund or old age pension in accordance with any scheme or rules framed by the government. The court observed that the benefits of PF Trust regulations were extended to only 'regular' employees, and the Central Government did not frame such regulations. It was held that the case did not pass the second test, so the exclusion under section 16 is not applicable.

The Court held that the contractual employees were also eligible for benefits under the PF Trust regulations as these employees were directly engaged and drew wages from the company. Further, the contractual employees also qualify for benefits under the EPF Act as they are covered under the definition of 'employee' under the Act.

The Court was seized of the fact that the retrospective application of the EPF Act caused a disadvantage to the fund from an actuarial point of view. Accordingly, it was held that the benefits did not apply to employees who superannuated, resigned or died as of the date of the judgment. Also, the benefits under the EPF Act will be made available to the contractual workers from the date of filing of the Writ Petition before the High Court to December 2019 (the date of the judgment of the Supreme Court). After that, the contractual employees are to be enrolled under the Provident Fund Trust regulations to ensure uniformity of service conditions for all employees of the appellant company.

PANTHER SECURITY SERVICE PVT LTD. VS REGIONAL PROVIDENT FUND COMMISSIONER
[Civil Appeal No.4435 of 2010]

The outsourcing of labour has been seen as a measure to increase efficiency in the industry. This outsourcing gained prominence in India in the late 90's, especially in security and housekeeping. Since then, numerous litigations revolve around the point of 'who is an employer for these outsourced employees.' Although numerous judgements in various high courts had discussions on this issue (*Group 4 Securitas Guarding Ltd. vs Employees Provident Fund Appellate Tribunal and others,* [184 (2011) DLT 591], *G4S Secure Solutions India Pvt. Ltd. vs The Regional Provident Fund Commissioner–I and others*[ILR 2018 Karnataka 2527], *Orissa State Beverages Corporation Limited vs. Regional Provident Fund Commissioner and others,* [2016 LLR 413]), the issue has attained finality in the judgment of a 2-judge bench of the Supreme Court in the case of *Panther Security Services Pvt Ltd. vs. Regional Provident Fund Commissioner* [CA No. 4435 of 2010]. Also, the judgement upheld the assessment under Section 7-A based on the balance sheet when the employer had not submitted the relevant registers despite being given sufficient opportunity.

The appellant, M/s Panther Security Services Pvt Ltd., provides private security guards to its clients on a payment basis. The appellant is registered under the Private Security Agencies (Regulation) Act, 2005(hereinafter referred to as "PSARA Act"). A team of Officers from EPFO conducted a search and seizure operation in 2005. Based on the seized documents, the APFC opined that the establishment is coverable under the scheduled head "expert services" and issued a demand letter to the appellant to deposit necessary contributions. Having objected to the same, the appellant's proceedings were conducted under Section 7-A of the EPF Act with the due opportunity of defence to the appellant and raised a demand. The appellant failed to submit attendance/salary registers, constraining the assessing officer from passing the order based on the balance sheet of the appellant-company. Aggrieved by the order, the appellant bypassed the remedy of appeal by the tribunal and approached the High Court. The High Court declined interference with the conclusion of expert services being rendered by the appellant. A review petition contending that the appellant stood duly registered under the Act of 2005 was also rejected.

The appellant's primary contention was that it was not covered under the scheduled head "expert services" as it merely provided chowkidars at the client's request and charged a service charge for the same. The salary was stated to be paid by the clients who engaged their services and had only five persons on its rolls.

The EPFO, the respondent in this case, countered the appellant's argument, stating that the appellant company renders expert services by providing trained personnel as security guards and hence fully covered under the scheduled head "expert services". Despite sufficient opportunity, the employer failed to submit attendance/salary registers. The assessing officer assessed the dues based on the balance sheet seized during the search, which reflected wages running into lakhs. Also, among the seized documents was a letter dated 03.04.2001 written by the appellant to the New India Assurance Company Limited, seeking a Group Janta Personnel Accident Insurance Policy of one lakh each for 79 security personnel.

The Supreme Court referred to various provisions of the PSARA Act under which the appellant company was registered as a private security agency. The act provides for obtaining a license, eligibility for appointment as a security guard, maintenance of salary registers, names, photos, addresses of the security guards, etc. The rules framed under the PSARA Act require verification by the security agency before employing any person as a security guard. Under these facts, the court held that the appellant is engaged in the specialised and expert services of providing trained and efficient security guards to its clients on a payment basis, squarely covered under the scheduled head "expert services". Further, the court observed that the appellant did not submit the statutory registers under the PSARA Act during the 7-A enquiry. Based on the balance sheets and the letter by the appellant seeking an accident insurance policy for 79 employees, the court concluded that the appellant had more than 20 employees; hence, the EPF Act is applicable.

ASSISTANT PROVIDENT FUND COMMISSIONER VS GODAVARI GARMENTS

AIR 1999 SC 2015

Contract of service and *contract for service* is one of the major debates surrounding labour laws. While contract of service refers to employment contracts, contract for service refers to independent contractors. The present judgment discusses the master-servant relationship in general and the definition of "employee" under the EPF and MP Act in particular.

The respondent company, M/s Godavari Garments Limited, is a ready-made garments manufacturer to provide gainful employment to women from economically weaker sections in stitching and tailoring. The women, working from home on their own sewing machines, were provided with the raw materials. The women supplied the stitched garments to the company. APFC, on scrutiny of the balance sheet, found disproportionately high debits under the head salaries and wages and initiated an inquiry under section 7-A. The respondent contended that these women were not their employees. The 7-A authority decided that these workers fall under the definition of "employee" under the EPF Act and assessed the dues. Aggrieved, the respondent company filed a writ petition in the Bombay High Court. While setting aside the order under Section 7-A, the High Court noted that the respondent company had no supervisory control over the women workers as anyone could stitch the garments. EPFO challenged the decision of the High Court in the Supreme Court.

The main contentions of the respondent company were ownership of the machinery, place of production, lack of supervisory control and lack of employer-employee relationship. EPFO, relying on *PM Patel & Sons vs. Union of*

India and others (1986) 1 *SCC* 32, contended that the women workers were covered under the definition of the 'employee' under the EPF Act.

The Supreme Court observed that the women workers were given raw materials and the specifications of the garments to be stitched. The respondent company, however, had the right to reject the finished product in case of any defect. Reliance was placed on *Silver Jubilee Tailoring House vs Chief Inspector of Shops and Establishments* [(1974) 3 *SCC* 49], where the Supreme Court had laid down a test to ascertain the master-servant relationship. Reliance was also placed on *PM Patel & Sons vs. Union of India and others* [(1986) 1 *SCC* 32], where the right to reject a finished product by the manufacturer was held to be a sufficient degree of control to establish a master-servant relationship. The criteria of place of production would not impact the status of the worker as an 'employee' as defined under the EPF and MP Act. It was therefore held that the women workers stitching garments from their homes for the respondent company qualify as 'employees' under the EPF Act and are entitled to benefits thereunder.

M/s L. N. Gadodia Vs Regional Provident Fund Commissioner

(2011) 13 SCC 517

The Special Leave Petition was filed to challenge the clubbing of the two appellant concerns for the purpose of applying the provisions of the EPF Act.

The respondent heard the petitioners and enforcement officer in the inquiry under Section 7-A of the EPF Act and concluded that there was an integrality in the management finance, and one family was running the workforce of the two companies and the entire business. The management and the supervision were in the hands of the same Managing Director, and the finances of one company were being used by the other. The respondent held that both the units belonged to one establishment, and they must be clubbed together for the purpose of application of the Provident Fund Act.

M/s L.N.Gadodia & Sons and M/s Delhi Farming and Construction Pvt. Ltd., are sister concerns. Both are separate legal entities, and there was no connection between the activities or business of the two companies. The Petitioners, drawing support from Section 2(A) of the Act, submitted that only different departments or branches of an establishment can be clubbed together, but not different establishments altogether.

The Court considered the rival submissions from both parties. The Court noted that welfare economics, enlightened self-interest and pressure of trade unions led the larger factories and establishments to introduce provident fund schemes for the benefit of their employees. However, the employees of small factories and establishments remained away from these benefits. With the increase in small-scale establishments, there was a need for beneficial enactment for the employees engaged therein. The Court relied on the approach explained in the *Sayaji Mills Ltd. vs. Regional Provident Fund Commissioner* [AIR 1985 SC 323] that 'the Act should be construed *to advance the object with which it is passed. Any construction which would facilitate evasion of the provisions of the Act should as far as possible be avoided'.*

The Court considered the guidelines laid down in the judgments in *The Associated Cement Companies Ltd., Chaibasa Cement Works, Jhinkpani vs Their Workmen* [AIR 1960 SC 56] and *Management of Pratap Press, New Delhi vs. Secretary, Delhi Press Workers' Union Delhi* [AIR 1960 SC 1213] 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.'* The Court has mentioned certain tests for use to decide in such cases, viz., unity of ownership, unity of management and control, unity of finance and unity of labour, unity of employment and unity of functional integrality.

The Court observed that though the term factory is defined under Section 2(g) of the Act, there is no definition of an establishment or a commercial establishment in the statute. The Court relied upon the definition of the 'establishment' and 'commercial establishment' under the Delhi Shops and Establishments Act, 1954.

The Court noted that the EPF Act is a welfare enactment and that the two petitioners may not be different departments of one establishment in the strict sense; however, run by the same family under common management with a common workforce and with financial integrity, they are expected to be treated as branches of one establishment for the purposes of Provident Funds Act.

The Court also observed that the petitioners had full opportunity to explain their position in the inquiry before the Provident Fund Commissioner was conducted under Section 7-A; however, they confined themselves only to a facile explanation. When any fact is especially within the knowledge of any person, the burden of proving the fact lies on him (Section 106 of the Evidence Act). Given the facts and circumstances, the Regional Provident Fund Commissioner was justified in drawing the inference of integrity of finance, management, and workforce in the two petitioners based on materials on record. The Court dismissed the appeal.

The judgment will aid the authorities in deciding the clubbing of establishments in furtherance of the object of the Act.

Bridge and Roof Co (India) Ltd vs Union of India

1963 AIR 1474, 1963 SCR (3) 978

The question which came for decision before the Supreme Court in Writ Petition filed under Article 32 of the Constitution was whether a production bonus is included within the term “basic wages” as defined in Section 2(b) of the EPF Act. The controversy arose as the Central Government, using its powers under section 19A of the Act, directed that production bonus, payable as part of a contract of employment either at a flat rate or at a rate linked to the quantum of work turned out satisfied the definition of “basic wages” under Section 2 (b) of the Act. The Petitioner was a public limited company engaged in manufacturing engineering goods, structural fabrication and rolling stock, and the Act applied to it. It had production bonus schemes in force, which provided production bonus payment over and above wages fixed by the major engineering award.

The petition was opposed on the grounds that wages are the price for labour and arise out of contract. The term “basic wages” merely indicates that a certain part of the total wages is being separated for certain purposes only. Whereas the production bonus, being in the nature of incentive wage, must be included in the definition of the term “basic wages” in Section 2(b) of the Act. The reason being that basic wages include “all emoluments which are earned by an employee while on duty or leave with wages following the terms of the contract of employment and which are paid or payable in cash to him[…] Therefore, production bonus being in the nature of an incentive wage is included in the terms “all emoluments” in the definition of “basic wages”, for production bonus is earned by an employee while on duty in accordance with the terms of the contract of, employment. It was further objected that the word "bonus"' as "used in clause (ii) of the exceptions to section 2(b), only referred to profit bonus because it was well established before 1952 that the use of the word "bonus" without any qualification referred to profit bonus only in industrial adjudications.

It was held by the Supreme Court that there was no doubt that "basic wages", as defined in Section 2(b) of the Act, meant that all emoluments which are earned by an employee while on duty or leave with wages in accordance with the terms of the contract of the employment and which are paid or payable in cash. However, if there were no exceptions to this definition, it would not have been any difficulty in holding that production bonus, whatever its nature, would be included within the ambit of basic wages. The difficulty arises because the definition also provides for certain exclusions contained in three clauses. The first clause mentions the cash value of any food concession, while the third clause mentions any presents made by the employer. The fact that the exceptions contain even presents made by the employer shows that though the definition mentions all emoluments which are earned in accordance with the terms of the contract of employment, care was taken to exclude presents which would ordinarily not be earned in accordance with the terms of the contract of employment. The Supreme Court was of the opinion that similarly. However, the definition includes "all emoluments" which are paid or payable in cash; the exception excludes the cash value of any food concession, which in any case was not payable in cash. Therefore, the exceptions do not seem to follow any logical pattern that would align with the primary definition.

The Supreme Court, while analysing the exceptions enumerated in clause (ii), found that though the Dearness Allowance is excluded from the definition of Basic wages, it is included for the purpose of contribution under Section 6 of the Act. Therefore, the Supreme Court concluded that the basis of the inclusion of Dearness allowance inSection 6 and exclusion in clause (ii) is that whatever is payable in all concerns and earned by all permanent employees is included for contribution under Section 6. But whatever is not payable by all concerns or may not be earned by all employees of a concern is excluded for the purpose of contribution.

Accordingly, it was held that the basis for the exclusion in clause (ii) of the exceptions in section 2 (b) is that all that is not earned in all concerns or by all employees of concern is excluded from basic wages. The exclusion of the dearness allowance in clause (ii) is an exception. But that exception has been corrected by including dearness allowance in section 6 for the purpose of contribution.

On the issue of whether the production bonus is also an exception under clause (ii) of Section 2(b) of the Act, the contention of the respondents that when the term "bonus" was used in industrial law before 1952 without any qualifying term it meant only profit bonus hence the production bonus was not part of the exception, was not accepted.

Similarly, another contention of the respondents is that wages arising out of the contract are the price for labour; hence, to be included in the definition of "basic wages", only those things that were excluded, which were a reward for labour, were not accepted. It was held that if there were no exceptions to the main part of the definition in section 2(b), whatever was payable in cash as price for labour and arose out of contract would be included in the term "basic wages" and reward for labour which did not arise out of contract might not be included in the definition. However, the central part of the definition is subject to exceptions in clause (ii), and those exceptions clearly show that they have even the price for labour.

Therefore, the Supreme Court allowed the petition and held that a production bonus of the typical kind in force in the Company was excepted from the term "basic wages", and accordingly, the decision of the Central Government that provident fund contributions must also be made on the production bonus earned by the employees was set aside.

The RPFC (II) West Bengal Vs Vivekananda Vidyamandir and Others

Civil Appeal No.6221 of 211

Five appeals were heard together to settle a common question of law: if the other allowances (such as special allowance, travel allowance, canteen allowance, conveyance allowance, etc.) paid by an establishment to its employees would fall within the expression "basic wages" under Section 2(b)(ii) read with Section 6 of the Act for computation of deduction towards Provident Fund.

The Respondent was an unaided school giving special allowance by way of incentive, which was reviewed from time to time upon enhancement of the student's tuition fees to its staff under an agreement between the staff and the management. The RPFC (II), an authority under the Act, held that the special allowance would be included in the basic wage for deduction of provident fund. The Single Judge set aside the order. The Division Bench initially allowed the appeal, holding that special allowance was a part of dearness allowance liable to deduction. However, the order was recalled at the behest of the respondent as none had appeared on its behalf. The subsequent Division Bench dismissed the appeal, holding that the special allowance was not linked to the consumer price index and, therefore, did not fall within the definition of basic wage, thus not liable to deduction.

The respondent/s argued that the term 'basic wages' contains exceptions and will not include what would ordinarily not be earned per the terms of the employment contract. Whatever is not payable by all concerns or may not be earned by all employees of a concern are excluded for the purposes of contribution. Further, the statute itself excludes certain allowances from the 'basic wages.'

The Division Bench heard the matter. The Court reviewed the judicial precedents set up in *Bridge and Roof Co. (India) Ltd. Vs. Union of India*, [(1963) 3 SCR 978]*; Muir Mills Co. Ltd., Kanpur Vs. Its Workmen,* [AIR 1960 SC 985]and *Manipal Academy of Higher Education Vs. Provident Fund Commissioner,* [(2008) 5SCC 428] and provisions enunciated by the legislature held that the allowances in question were neither variable nor linked to any incentive for greater output by an employee and were found to be paid across the board to all employees. The allowances were essentially a part of the basic wage camouflaged as part of an allowance to avoid deduction and match the equal contribution. The Court allowed the appeal preferred by the RPFC.

The ruling is important and has significant implications in determining an employee's basic wages for the Provident Fund. The judgement reaffirmed that the EPF Act is a beneficial piece of legislation and required to be interpreted in a manner to sub-serve and advance the purpose of the legislation.

Surya Roshni Ltd (*one of the respondents*) filed a review petition No. 1972-1973/2019 against the judgment. However, in the absence of any justifiable reasons, the Court rejected the petition.

Express Publications (Madurai) Ltd and Another vs Union of India and Another

(2004) 11 SCC 526

Express Publication (Madurai) Ltd. v. Union of India is a notable case on interplay between fundamental rights of employers their obligation towards employees' PF . In this case, the employer, Express Publication (Madurai) Ltd., sought to challenge paragraph 80 (2) of the Employees Provident Fund Scheme, 1952, which was implemented in 1956. This specific paragraph operates to exempt the employees within the newspaper industry from the meaning of 'excluded employees' under Paragraph 2(f)(ii) of the Employees' Provident Funds Scheme, 1952, even if their salary exceeds the statutory ceiling notified by the Central Government from time to time.

The main argument made by the petitioners is that Para 80(2) of the EPF Scheme unfairly excludes the 'test of income' for employees in the newspaper industry, creating an unjust distinction between this group thereby violating Article 14 of the Indian Constitution. Moreover, it is asserted that this definition places an undue financial burden solely on newspaper establishments. The petitioners even contended a violation of the right to freedom of speech and expression (Article 19(1)(a)) by arguing that the additional burden imposed makes it challenging to maintain the newspaper's price level without deterring readership, thereby undermining the advancement of press freedom.

The petitioners stated that although the challenged provision was enacted in 1956, they initially endured the burden with composure and a sense of correctness. However, as the years passed, both the newspaper industry as a whole and the petitioners' organisation, in particular, suffered a significant setback, prompting their challenge at this juncture.

To appreciate the challenge in question, the Supreme Court examined certain provisions of the Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955. Section 15 of the Working Journalists Act specifies that the EPF Act shall apply to any newspaper establishment where twenty or more individuals are employed on any given day. It is to be regarded as if the newspaper establishment were a factory, to which the mentioned Act had been applied through a notification from the Central Government under sub-section (3) of Section 1. This provision treats a newspaper employee as an employee within the meaning of the EPF Act.

However, the case of the Petitioner did not pertain to the application of the EPF Act to employees of newspaper establishments but instead centres on the exemption of newspaper establishment employees from the income ceiling—a departure from the practice of imposing an income ceiling on employees of other establishments and industries like Steel, Heavy Engineering and other cash-rich industries covered by the EPF Act.

The Supreme Court examined whether the impugned Act violated the fundamental right guaranteed under Article 14 of the Indian Constitution. The Court recognised that while formulating the scheme, unique circumstances specific to the press industry had to be considered. The Press Commission had considered these circumstances when recommending special treatment for working journalists to improve their working conditions. The Court observed that working journalists formed a distinct group, and this classification was justifiable. The Court acknowledged the prevailing situations in other countries as well. In essence, it was established that working journalists could be considered a separate and distinct group. Therefore, if the Legislature initiated legislation to enhance their working conditions, it was not discriminatory and did not violate the principles outlined in Article 14 of the Constitution.

Another notable aspect of the case is the challenge to the notification after a significant delay of 45 years. The Supreme Court, despite rejecting the petition, added a caveat to their decision. The caveat suggests that if a petitioner argues that a particular provision, which was initially valid and constitutional, has over time become unconstitutional due to changes in circumstances or evolving societal norms, then the Court would not consider the mere passage of time as a reason to dismiss a writ petition challenging that provision. The caveat emphasised that the focus should be on the current constitutionality of the provision rather than on the delay in filing the petition.

Regional Provident Fund Commissioner vs Shibu Metal Works

1965 AIR 1076 SC

The short question for consideration before the Supreme Court in this matter was whether the respondent, which was a manufacturer of brass utensils, would qualify as a factory engaged in the manufacture of 'Electrical, Mechanical or General Engineering' (EMGE) products. The Regional Provident Fund Commissioner, Punjab and Haryana had directed the respondent to comply with the provisions of the Act as a factory engaged in the manufacture of EMGE products, which answered the description of the first Schedule of the Act.

The action was challenged before the Punjab and Haryana High Court, which set aside the RPFC's order while holding that the manufacture of brass utensils would not fall within the entry 'Electrical Mechanical or General Engineering' products enumerated in Schedule-I of the EPF Act.

The RPFC challenged the High Court's judgement in the Supreme Court. The Court took the view that the Act was a piece of beneficial legislation and merited a liberal interpretation. Speaking through a three-judge bench, the Court observed:

The object which the Act purports to achieve is to require that appropriate provision should be made for the employees employed in the establishments to which the Act applies; and that means that in construing the material provisions of such an Act, if two views are reasonably possible, the courts should prefer the view which helps the achievement of the object. If the words used in the entry are capable of a narrow or broad construction, each construction being reasonably possible, and it appears that the broad construction would help the furtherance of the object, then it would be necessary to prefer the said construction.

The Court also observed that the expression 'electrical, mechanical or general engineering' products, as appearing in Schedule-I of the Act, would include not only the products which are required for the stated purposes but also those products which are the result of 'electrical, mechanical or general engineering' processes. Consequently, it was held that a factory engaged in the manufacture of brass utensils would qualify for the description of the first Schedule of the Act.

Regional Provident Fund Commissioner vs M/s Raj's Continental Exports (P) Ltd

2007(2) SCC (L&S) 37

The case involves a dispute revolving around the applicability of the EPF Act to M/s Raj's Continental Exports Pvt. Ltd., which sought infancy protection under the erstwhile provisions of Section 16(1)(d) of the EPF Act, claiming that it commenced production in 1984 only and the provisions of the Act cannot be applied for first three years. Section 16(1)(d) protected thenewly set-up establishments from coverage for three years as a breathing time. Later, this provision was deleted by the Amendment Act 1998, effective from September 22, 1997. The Regional Provident Fund Commissioner contended that it was an extension or branch of an already-covered establishment, viz., M/s Continental Exporters, in terms of Section 2-A of the EPF Act, and hence, the infancy protection is not available to the Respondent.

The facts of the case were that the Managing Director of M/s Raj's Continental Exports Pvt. Ltd. was also the sole proprietor of M/s Continental Exporters. However, M/s Raj's Continental Exports Pvt. Ltd. was independently registered under various legislations, including the Factories Act, Central Sales Act 1956, Income Tax Act 1961, and the Employees' State Insurance Act. They maintained separate financial records, including Balance Sheets and audited statements of accounts.

The Karnataka High Court considered these facts and emphasised that there was a clear and independent exercise of authority within both entities. Despite both entities being engaged in manufacturing similar production, this similarity alone did not establish that the Respondent was a branch or department of M/s Continental Exporters. The High Court explicitly found that there was complete autonomy in managing and controlling their affairs, and the employees were separately recruited and managed. Consequently, considering these factors, the High Court concluded that the Respondent company and M/s Continental Exporters are different.

An appeal was filed challenging the decision of the learned Single Judge in the Writ Appeal. Upon a thorough examination of the facts, the Division Bench of the Karnataka High Court determined that there were no commonalities between the two entities. The fact that the proprietor of one entity also served as the Managing Director of the other was insufficient to establish that one was a branch or department of the other. As a result, the Writ Appeal was rejected.

In this case, the Supreme Court referred to its own judgments in previous cases, such as *Pratap Press, etc. vs. Their Workmen* [1960 (1) LLJ 497] and Regional *Provident Fund Commissioner and another vs. Dharamsi Morarji Chemical Co. Ltd.* [1998 (2) SCC 446].

The case of *Pratap Press, etc. vs. Their Workmen* established that determining whether two activities involving a single owner constitute one industrial unit or two distinct units is not always straightforward. There are no fixed rules, and each case must be assessed based on its specific circumstances. In some instances, if the two activities are closely interconnected to the point that a reasonable person would not consider them independent industries, they may be treated as a single unit. In other cases, the connection between the two activities may not be enough to provide a clear answer, but the employer's actions regarding the blending or separation of capital, staff, and management can often provide a decisive factor. In *Regional Provident Fund Commissioner and another vs Dharamsi Morarji Chemical Co. Ltd.*, it was emphasised that unless there is clear evidence of supervisory, financial, or managerial control, it cannot be concluded that one entity is a branch of another.

Based on the precedents and principles outlined in the two cases mentioned above, the Supreme Court dismissed the civil appeal, concurring with the observations and findings of the Karnataka High Court.

Regional Provident Fund Commissioner, Jaipur vs M/s Naraini Udyog and Others

1996 SCC 1284

The issue for consideration before the Supreme Court in this matter was regarding the parameters which should be prescribed to examine whether two separately incorporated business entities would qualify as a single estrablishment under the Act. The Respondent-establishments contended that they were separately registered under various laws, located 3 kilometers apart, having distinct Central Excise registration numbers, and were registered as separate small-scale industries; hence, they should be considered different entities for the purposes of the EPF Act.

The Regional Provident Fund Commissioner reported functional unity and integrality between these two concerns despite being registered as separate entities. However, the Division Bench of the Rajasthan High Court concluded that they were registered under the Companies Act as two distinct entities represented by members of the same family and, therefore, should be considered independent companies, not liable for combined contributions under Section 7-A of the Act. The Division Bench of the Rajasthan High Court held that they were registered under the Companies Act as two different individual identities; though the members of the same family represent them, they are two independent companies.

Reversing the High Court order and restoring the order passed by the Regional Provident Fund Commissioner, the Supreme Court observed that though they are registered as two independent units and represented separately by the members of the Hindu Undivided Joint family, there is functional unity and integrality between the two concerns. Consequently, they ought to be treated as a 'composite establishment' because of the beneficial nature of the legislation. The Supreme Court pointed out that "the concept of an establishment for the purposes of the Act is wide enough to include more than one factory, and as such, the factors relied upon by the management do not cut across that concept."

The Supreme Court also took into account certain evidential facts. The Supreme Court also noted that the statement by the Provident Fund Inspector, claiming to have seen workers from M/s Naraini Udyog working in M/s Modern Steel, was denied by the employer, but it was not considered a crucial point by the High Court. Furthermore, the submission by the department that the office of M/s Modern Steel was located in the premises of M/s Naraini Udyog, and the same clerks maintained the accounts of the two were not countered by the employer.

In summary, the judgment considered various factors and concluded that the two firms should be treated as a single establishment for the purpose of the Act, citing Section 2-A of the EPF Act, 1952 and previous Supreme Court case law as supporting this conclusion.

M.P. Shikshak Congress and Others vs R.P.F. Commissioner, Jabalpur and Others

1999 AIR (SC) 443

The appellants before the Supreme Court was were the teachers and other employees of various government aided private schools in the State of Madhya Pradesh. High Court of Madhya Pradesh had upheld the orders of the Regional Provident Fund Commissioner by which the concerned employers of the Schools were directed to deposit the Contribution under the EPF Act for the period January 1, 1982, to December 1, 1988.

The facts of the case were that by notification of *"Ashasiya Shikshan Sanstha Institutional Fund Rules, 1983"* under Madhya Pradesh Act 20 of 1978, known as *"Madhya Pradesh Ashaskiya Sikshan Sanstha (Adhyapakon Tatha Anya Karmchariyon ke ventano ka Sandaya) Adhiniyam, 1978"* first-time specific provision was made for the opening of accounts for deposit of salary and teachers' contribution to the provident fund. The Rules of 1983 also provided for Form for the statement of Provident fund apart from how the amount was to be dealt with. However, this rule also provided that notwithstanding contained in these Rules where the provision of the Central Act would apply to any teachers and other employees of any Institution, the provident fund and other records relating thereto shall be maintained in accordance with the provisions of the said Act. The Rules framed in 1978 under the said Act of 1978 (which were replaced by 1983 Rules referred supra) did not set up any new scheme for a contributory provident fund nor prescribed any contribution rate to a contributory provident fund. Prior to 1982, the Central Act was not applicable to educational institutions. Hence, the teachers and employees of the aided schools in Madhya Pradesh remained under the Contributory Provident

Fund Scheme of the Central Provinces and Berar Educational Manual 1928 as it provided for a scheme constituting a provident fund for teachers in non-pensionable service. Even after the Madhya Pradesh Act 20 of 1978 was promulgated, the same scheme continued as the State Act of 1978 did not provide for any new scheme for contributory provident funds.

The controversy arose because in 1982, by notification in the Gazette of India in the exercise of the powers conferred under section 1(3)(b) of the Central Act, the Central Government extended the coverage to educational institutions in which 20 or more persons were employed. This notification brought under the ambit of the Central Act, even those Schools which were recognised or aided by the Central or State Government. By virtue of this notification, the Central Act became applicable to the aided schools of the State of Madhya Pradesh with effect from 06.03.1982. Thereafter, by an amendment to Section 16(1)(b) of the Central Act made on the 1st of August, 1988, it was provided that the EPF Act shall not apply 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. Therefore, the question which the Supreme Court decided was whether, by the amendment of Section 16(1)(b), the Central Act ceased to apply to the employees and teachers of the aided schools of the State of Madhya Pradesh or not.

The contention of the appellants was that the Central Act was a prior Act in existence in 1978 when the State Act was promulgated with the assent of the President. Hence, by virtue of the provisions contained in Article 254(2) of the Constitution of India, the State Act 20 of 1978 would prevail over the

Central Act. The Supreme Court did not agree with this argument and observed that though under Article 254 (1) of the Constitution, when both the State legislature and the Parliament are competent to enact a law on a given subject, it is the law made by Parliament which will prevail, there is an exception to this rule under clause (2) of Article 254. Under this clause (2), where a law made by the legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament, then the law so made by the legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in the State.

The Supreme Court pointed out that before clause (2) of Article 254 is attracted, there must be a repugnance between any provision of a state law and any provision of an earlier existing law made by Parliament. In the present case, the Supreme Court observed when the Madhya Pradesh Act 20 of 1978 was enacted, there was no repugnance between its provisions and the EPF Act 1952 already enacted by Parliament. The Parliamentary Act did not apply to educational institutions. The State Act dealt with salaries and other ancillary matters governing certain educational institutions. Therefore, there was no repugnancy between the earlier Parliamentary legislation and the late State legislation.

The Supreme Court, by considering the preamble and other provisions of the State Act 20 of 1978, also held that there was no repugnancy between the State Act and the Central Act as the State act did not even provide for any scheme for setting up of a Provident Fund. The Supreme Court observed that the State Act of 1978 only required that the institutional contribution to any Provident Fund scheme be paid into the institutional fund set up under the said Act. The Supreme Court, therefore, opined that it was by reason of the Central

Government Notification of March 1982 that the EPF Act was extended to the educational institutions, and it became applicable to the educational institutions in Madhya Pradesh for the first time on 6th March 1982. This was much later than the enactment of the State Act 20 of 1978. The Parliamentary enactment, therefore, would not prevail over the State Act 20 of 1978, assuming that the State act of 1978 created any scheme for Provident Fund. Article 254(2), therefore, had no application in the present case.

The Appellants, however, relied upon the case of *Pt. Rishikesh and another vs Salma Begum (Smt.)* [(1995) 4 SCC 718] in which the Supreme Court had said that if a law is made by Parliament at a given date but is brought into force at a later date, then if in the interregnum, a State law is made which received the assent of the President, the State law will prevail, because the law made by Parliament is an earlier law.

The Supreme Court, however, felt that this ratio had no application to the present case where the Central Act was already in force from inception. Further, this law in force was not repugnant to the State Act when the State Act came into force. However, the Central Act was applied to educational institutions later than the State Act in the present case. Hence, the repugnancy arose only at a later date when the Central Act became applicable to educational institutions. In such a situation, there could be no question of the application of Article 254(2) because the repugnancy arose later in point of time than the State Act. Moreover, in the present case, there is no question of repugnancy between the two Acts since the State Act of 1978 does not provide for any Provident Fund scheme.

However, after the application of the Central Act to the education institutions in 1983, new rules were framed by the State of Madhya Pradesh under Act 20 of 1978 (State Rules of 1983), under which, for the first time, a scheme was set out for Contributory Provident Fund covering the teachers and employees of aided school. The State Government, however, was conscious of the fact that the Central Act was applicable in the State of Madhya Pradesh. Therefore, by Rule 10(6) of the State Rules of 1983, it was provided that the scheme as set out in the State Rules of 1983 would not apply where the provisions of the Central Act apply. Therefore, far from there being any conflict between the State and the Central Legislation, the State legislation by Rules framed in 1983 had excluded from the operation of the State scheme as framed under the 1983 rules, those employees to whom the Central Act applied.

Accordingly, the Supreme Court held that there could be no doubt that for the period 1st August, 1982 to 1st August 1983, the EPF Act was applicable to such teachers and employees of aided schools in Madhya Pradesh who were covered by the provisions of the scheme framed thereunder. The orders of the Regional Provident Fund Commissioner, as it related to the period 1st August 1982 to 1st August 1988 were held valid.

As the orders of the RPFC also referred to an additional period from 1st August 1988 to 1st December 1988, which was affected by the amendment made to Section 16(1)(b) of the EPF Act in August, 1988, the matter was remitted to the RPFC concerned only for the limited purpose of examining whether for the period 1st August 1986 to 1st December 1988, the provisions of the EPF Act were application to the educational institutions concerned.

Mathosri Manikbai Kothari College of Visual Arts v. Assistant Provident Fund Commissioner

Civil Appeal No. 4188 of 2013

The *Ideal Fine Arts Society* operated two educational institutions, the *'Ideal Institute of Fine Arts'* and the *'Mathosri Manikbai Kothari College of Visual Arts.'* Both institutions were situated on the same campus. The Ideal Institute was established in 1965, while the Arts College was founded in 1985-86. The Ideal Institute employed eight individuals, while the Arts College had eighteen employees. The matter arose concerning clubbing the number of employees of these two institutes and bringing them under the purview of the EPF Act as one establishment.

According to the Enforcement Officer's report, there were a total of 26 employees working across both Institutes, which were managed by the same Society within the same premises. Consequently, it was determined that the establishments fell under the purview of the EPF Act. Subsequently, following a hearing, the Commissioner issued an order under Section 7-A of the EPF Act, assessing the contribution amounts to be made by the appellant under various Schemes of the EPF Act.

The appellant, Mathosri Manikbai Kothari College of Visual Arts, challenged this order through a statutory appeal before the Tribunal, which was dismissed. The appellant then filed a Writ Petition against the Tribunal's order before the High Court. The Single Judge Bench dismissed the petition. Finally, in the writ appeal, the Division Bench of the High Court upheld the decision of the learned Single Judge.

Before the Supreme Court, the appellant contended that the Ideal Institute and Arts College were distinct entities and were only managed by the same Society. They emphasized the absence of any financial interdependence between the two institutions and highlighted the variance in the courses offered, each with permissions and affiliations from different authorities. The Ideal Institute received a full grant-in-aid, while the Arts College received 70% grant-in-aid from the Government of Karnataka. The appellant further underscored the disparity in the founding years of the two institutions, 1965 for the Ideal Institute and 1985-86 for the Arts College. Additionally, they argued that since both establishments functioned independently and did not employ 20 or more individuals, the amalgamation of the two for coverage under the EPF Act was unlawful and warranted annulment.

Before reaching the judgment, the Supreme Court reviewed various earlier decisions. For example, the Supreme Court said that the case of Noor Niwas Nursery Public School had similar circumstances to the present case. In that case, the same society operated a Higher Secondary School and a Nursery School. The appellant had argued that since the institutions had maintained separate accounts and had been managed by different committees, they should not have been considered a single establishment for the purposes of the EPF Act. The Court was tasked with assessing the level of functional integrity between the two units and determining whether one could exist independently of the other. Upon examining the evidence, the Court found that the two institutions were situated on the same premises, indicating geographical proximity along with other indicators of interdependence, and therefore were rightly considered as one establishment under the EPF Act.

Similarly, in the case of *L.N. Gadodia & Sons*, the issue concerned the amalgamation of two companies, Delhi Cattle Farming Pvt. Ltd. and Delhi Farming and Construction Pvt. Ltd. The appellant argued that the two companies operated independently with no connection in their activities or businesses.

However, the enforcement authority had pointed out the commonalities between the two, including a shared registered office, some common directors, financial transactions, and shared contact information. Despite their separate legal entities, the Court determined that the two companies were essentially branches of the same establishment due to common management, shared workforce, and financial integration. Consequently, the Court ruled that the EPF Act would apply, and both companies would be regarded as one establishment for the purpose of coverage under the EPF Act.

In the present case, after reviewing the relevant literature, such as above, and after examining the facts, the Supreme Court noted that some crucial materials not presented before the High Court and other lower authorities were introduced for the first time before the Supreme Court. The Court found these to be sufficient for a non-suit. However, to ensure fairness to the appellant, the Supreme Court proceeded to examine the documents that were newly brought before it for the first time.

The first document was a letter from the University Grants Commission, addressing the Registrar of Gulbarga University, confirming the inclusion of the appellant college in the list of approved colleges. The name of the college was stated as 'The Ideal Fine Arts Society's College of Visual Art,' indicating a clear association with the Society. Another document was the certificate of accreditation issued by the National Assessment and Accreditation Council in the name of 'The Ideal Fine Art Society's Mathosri Manikbai Kothari College of Visual Arts,' further contradicting the appellant's claim of independence.

Apart from the interchangeable uses of names, the Supreme Court noted certain financial transactions between the appellant and the Society. After examining the available evidence and considering the established legal position, the Supreme Court concluded that a financial interconnection existed between the appellant's Society and the Ideal Institute, as significant funds had been transferred from the Society to both Institutes. Moreover, it was established that both the Institutes were operating from the same premises. Therefore, the decision of the PF Commissioner was upheld, and the appeal was dismissed.

Noor Niwas Nursery Public School Vs. Regional Provident Fund Commissioner

Civil Appeal No. 3320 of 1997

The appellant, Noor Niwas Nursery Public School, New Delhi, was aggrieved by the application of the EPF Act. The appellant institution was run by Baptist Union North India, a registered Society. The said Society ran two schools, namely, Francis Girls Higher Secondary School, which was established in 1916 and the appellant school, which ran nursery classes. The appellant school was started in the year 1971. The claim of the appellant school was that Francis Girls Higher Secondary School and the appellant school, Noor Niwas Nursery Public School, were two different institutions having separate and independent accounts and were managed by two different Managing Committees. The appellant had four employees, and it being a separate establishment was not covered by the provisions of the Act. Therefore, it was contended that Francis Girls Higher Secondary School and the appellant school could not be treated as one establishment for the purpose of the Act.

The respondent, Regional PF Commissioner's contention was that an Inspector of the Department had visited Francis Girls Higher Secondary School and the Head Clerk in Francis Girls Higher Secondary School gave particulars not only in regard to Francis Girls Higher Secondary School but also in regard to the appellant school. The said Inspector was examined as a witness before the Provident Fund Commissioner. He was thoroughly cross-examined, suggesting that the letter seeking a common number for depositing the contribution to the provident fund was obtained under duress. But denying the same, the Inspector clearly stated that this information had been furnished voluntarily. The Provident Fund Commissioner, based on this material, held that the two institutions constituted one and the same establishment and, therefore, were covered by the Act. This order of the Provident Fund Commissioner was unsuccessfully challenged before the High Court. Hence, the appeal was brought before the Supreme Court.

The Supreme Court explained that the determination of whether two units should be considered as one or distinct must be made in accordance with the provisions of Section 2-A of the Act. The court must examine the extent of functional integration between the two units, whether one unit cannot function conveniently and reasonably without the other, and whether the employer has maintained the two units as distinct or integrated in terms of finance and employment.

The Supreme Court further emphasized that, in the current case, the close proximity of the two units, their shared address, and the fact that they were both run by the same Society suggested a strong interconnection between them. Given that the Head Clerk of Francis Girls Higher Secondary School possessed information about the appellant school and provided these details to the Inspector during the visit for the grant of a code number, it strongly indicated the unity of the two units. The Court noted that the appellant school catered to nursery classes while higher classes were provided at Francis Girls Higher Secondary School, establishing a clear link between the two. Thus, the conclusion drawn by the Provident Fund Commissioner and affirmed by the High Court was considered accurate in this context.

Consequently, the Supreme Court found no justifiable reason to interfere with the decision of the High Court, affirming the Provident Fund Commissioner's stance.

THE REGIONAL PROVIDENT FUND COMMISSIONER VS SHILLONG CITY BUS SYNDICATE

1996 AIR 1546: JT 1996 (3): 581:1996 SCALE (3)125

In this case the principal question before the Supreme Court was whether the EPF Act applied to the Khasi Hills Autonomous District after the Autonomous Council to the said District was constituted on June 27, 1952. The Appellant in the case was the Regional Provident Fund Commissioner, and the Respondents were the Shillong City Bus Syndicate and another party. The dispute arose when the Respondents challenged a memo dated October 26, 1972, issued by the Appellant under Section 7-A of the EPF Act, alleging non-payment of the EPF contributions.

The Regional Provident Fund Commissioner contended that the Fifth and Sixth Schedules of the Constitution were designed to protect the autonomy of tribal areas and establish a distinct administrative system by creating District or Regional Councils with legislative powers. Article 245 of the Constitution grants the Parliament and State Legislatures authority to enact laws for India's entire territory. The Employee Provident Fund and Miscellaneous Provisions Act was intended to implement welfare programs for workers in covered industries. According to the Appellant, upon the establishment of autonomous Districts or Regional Councils, as per Paragraph 12-1(b) concerning Assam and Paragraph 12 (b) concerning Meghalaya, all Acts of Parliament were meant to apply to these designated autonomous Districts unless the Governor or President issued a notification specifying exceptions or modifications. Since the Khasi Hills Autonomous District Council was established on June 27, 1952, the Act was considered to apply to it by default, making the notice issued by the Appellant legally valid.

The respondents argued that the Constitution aimed to safeguard the autonomy of autonomous Districts, tailored to their specific environments, by excluding the application of any law enacted by the Parliament or State Legislature. They contended that the Act, in this case, was not made applicable to the Khasi Hills Autonomous District by a public notification from the President. The purpose of the Sixth Schedule of the Constitution was seen as preserving tribal autonomy within autonomous Districts by automatically applying Acts of Parliament or State Legislatures, as specified in the Schedule. The non-obstante clause was viewed as a provision that made the Schedule's provisions operate exclusively in the designated area, thereby implying that the operation of Acts of Parliament or State Legislatures was not automatic within that context. The Respondents argued that the EPF Act did not apply to the Khasi Hills Autonomous District, as their bus operations were entirely within the District and not within the jurisdiction of Shillong Municipality.

The matter was referred to a five-judge bench of the Gauhati High Court, which delivered a majority (4:1) judgement which held that the Act did not apply to the district and, therefore, the notice issued by the Appellant was without jurisdiction. However, the dissenting judge believed the Act should apply to the districts. The RPFC argued that the Act should apply to the Khasi Hills Autonomous District because of the constitutional provisions related to autonomous councils and the power of the Governor or the President to make Acts of Parliament applicable to such districts. The Respondents contended that the Constitution intended to protect the autonomy of autonomous districts by automatic application of Acts of Parliament, and the EPF Act was not made applicable by the President of India through public notification.

The Supreme Court, to better understand the arguments and their impact on the autonomy of districts or regions governed by the Sixth Schedule of the Constitution, carefully examined the relevant constitutional provisions. These provisions were established due to historical considerations for tribal populations residing in areas designated in the Fifth and Sixth Schedules. The Constitution introduced a distinct scheme for administering tribal areas, particularly in Assam, Meghalaya, Mizoram, and Tripura. The Supreme Court's examination focused on the interaction between Paragraphs 12, 12-A, and 19 of the Sixth Schedule. Paragraph 2 dealt with the formation of District and Regional Councils, while Paragraph 3 granted these Councils legislative powers to create laws concerning specific subjects listed in clauses (a) to (j). However, these laws required the Governor's approval to become effective.

Paragraph 19, on the other hand, is a transitory provision that is applicable until the autonomous District or Regional Councils are established in the State. During this transitional period, Acts of Parliament and State Legislatures will not apply to the designated area unless the Governor issues a public notification directing their application and specifying any exceptions or modifications. The Governor also has the authority to create regulations, repeal, or amend Acts of Parliament or State Legislature that apply to the area, including issuing such directions with retrospective effect. These regulations, amendments, and orders require the President's assent before they can have legal effect. Once the District or Regional Council is constituted, the power conferred by Paragraph 19 ceases, and Paragraph 12 comes into operation concerning autonomous District Councils or Regional Councils in Assam. In contrast, Paragraph 12-A applies to District or Regional Councils in Meghalaya. Paragraphs 12 and 12-A allow the Governor or President to direct the application of Acts of Parliament to the area, specifying any exceptions or modifications.

The Supreme Court held that the Act was applicable to the Khasi Hills Autonomous District once the District Council was constituted on June 27, 1952. The Act had already come into operation for the entire territory of India, except for Jammu & Kashmir, on March 4, 1952. It did not require separate publication in the region. Paragraph 12-A(b) gave the President the power to exclude or modify the application of any Act of Parliament in the autonomous District. Since the President published no such notification, the Act applied to the Khasi Hills Autonomous District. The Supreme Court upheld the minority view of the High Court and set aside the majority view of the High Court. The notice issued under Section 7-A of the EPF Act was deemed applicable to the Respondents, and they were required to comply with it.

In summary, the case revolved around the applicability of the EPF Act to the Khasi Hills Autonomous District and the interplay of constitutional provisions governing autonomous district councils. The Supreme Court ultimately held that the EPF Act applies to the District, and the notice issued under it was valid.

THE REGIONAL PROVIDENT FUND COMMISSIONER, ANDHRA PRADESH VS T.S.HARIHARAN

Citation: 1971 AIR 1519

This judgment was passed by the Supreme Court under civil appellate jurisdiction in an appeal filed by the Regional Provident Fund Commissioner, Andhra Pradesh, after taking a certificate from the Andhra Pradesh High Court under Article 133 (1) (b) of the Constitution. The appeal was filed before the Supreme Court despite the fact that the writ petition presented by T. S. Hariharan, Proprietor of New Cochin Cafe, Ongole, was dismissed by the High Court. Therefore, even after getting the final order in its favour from the High Court, the Regional Provident Fund Commissioner appealed to the Supreme Court as the High- Court, in the course of its judgment, had expressed the view that Clause (a) and (b) of sub-section (3) of Section 1 of the EPF Act did not cover casual labour. As this expression of opinion, despite being legally erroneous, would have been binding on the appellant in administering the Act, it was necessary to have the correct legal position enunciated by the Supreme Court.

It was argued by the appellant the observations made by the High Court that "the provisions of the Act are inapplicable to establishments which do not employ 20 or more persons to work therein for a period of one year" are not tenable. Instead, it was canvassed on behalf of the appellants that employment of a person for however short a period would be employment for the purpose of determining the number of persons employed as contemplated by Section 1 (3) (a) and (b) of the Act.

As there was no representation on behalf of the respondent, the Supreme Court did not have the benefit of the respondent's point of view.

Hence, the Supreme Court confined itself strictly to the limited question of the scope of clauses (a) and (b) of sub-section (3) of Section 1. After briefly considering the facts as available in the respondent's writ filed before the High Court and the statutory provisions as stipulated under the Act in 1962, the Supreme Court distilled the question at hand as "whether Clause (b) of sub-section (3) of Section 1 when it speaks of the establishment employing 20 or more persons means that the person so employed may be employed by the establishment for any purpose whatsoever and for however short a duration or that the employment must be for some minimum period in the establishment." As the Supreme Court did not find the language used in the clause of much help in this regard, it relied on the legislative scheme, the object and purpose of enacting this clause and the ultimate effect of adopting one or the other construction. Accordingly, it was held that Section 16 (as was available in 1962) throws considerable light on the point raised as this section excluded from the applicability of the Act establishments belonging to the Government and to local authorities and infant establishments. It was, therefore, in the view of the Supreme Court, obvious that this Act was intended to apply only where the establishment had attained sufficient financial stability and was prosperous enough to be able to afford regular contributions provided by the Act. Contribution by the employer is an essential part of the statutory scheme for effectuating the object of inducing the workmen to save something regularly. The establishment, therefore, must possess the stable financial capacity to bear the burden of regular contribution to the Fund under the Act. In this connection, it may be recalled that as per Section 1 (5) (as was available in 1962), an establishment to which the Act applied continued to be governed by the Act, notwithstanding that the number of persons employed by it at any time fell below the required number. This liability to be governed by the Act ceases only if the terms of the Proviso to Section 1(5) were complied with. The provision as it stood in 1962 stated that "[…] *Provided that where, for a continuous period of not less than one year, the number of persons employed therein has been less than fifteen, the employer in relation to such establishment may cease to give effect to the provisions of this Act and any scheme framed thereunder, with effect from the beginning of the month following the expiry of the said period of one year, but he shall, within one month, of the date, of such cessation, intimate, by registered post, the fact thereof to such authority, as may be specified by appropriate Government in this behalf*."

Accordingly, the Supreme Court held that the financial capacity of the establishment to bear the burden must, therefore, have some semblance of reasonably long-term stability. In other words, the employment of the requisite number of persons must be dictated by the normal regular requirement of the establishment, reflecting its financial capacity and stability. It, therefore, followed from this that the number of persons to be considered to have been employed by an establishment for the purpose of this Act had to be determined by taking into account the general requirements of the establishment for its regular work, which should also have a commercial nexus with its general financial capacity and stability.

It was opined by the Supreme Court that acceding to the appellant's argument would lead to some startling consequences. This was shown by the Hon'ble Court by way of illustration that if, for the purpose of extinguishing accidental fire, an establishment is compelled to employ a few persons for about a couple of hours, even then, however weak and unstable its general financial capacity, the establishment would be covered by the Act and would have to contribute towards the provident fund for the benefit of its regular employees, of course, excluding those whose services were utilised for a short while for extinguishing the fire. In this illustration, the assumption was that the employees had no objection to being governed by the Act. This, in the opinion of the Supreme Court, could never have been the intention of the legislature. Similarly, it found difficult to impute to the legislature an intention to exclude from the application of the Act an establishment which regularly employs for its general business the required number of persons for a major part of the year, say, for 360 days every year, merely because the employment of the required number does not extend to full one year. Both the extreme views, the one canvassed on behalf of the appellant and the other postulated in the observation of the High Court that the required number of persons must continuously work in the establishment for one year, did not conform to the scheme and object of the Act and were, therefore, not found acceptable.

Considering the language of Section 1 (3) (b) and in the light of the foregoing discussion, it was felt by the Supreme Court that employment of a few persons on account of some emergency or for a very short period necessitated by some abnormal contingency which was not a regular feature of the business of the establishment and which did not reflect its business prosperity or its financial capacity and stability from which it can reasonably be concluded that the establishment could in the normal way bear the burden of contribution towards the provident fund under the Act, would not be covered by this definition. The word "employment" must, therefore, be construed as employment in the regular course of business of the establishment. Such employment obviously would not include employment of a few persons for a short period on account of some passing necessity or some temporary emergency beyond the control of the company. This must necessarily require the determination of the question in each case on its own peculiar facts. The approach must be kept in view when determining the question of employment in a given case.

The appellant's argument in the present case was that the respondent had to employ a few persons every year regularly from June to September to supply water to the hotel because of the failure of rains. This, according to the appellant, would be regular employment, and the High Court was wrong in holding to the contrary. The Supreme Court held that there is no finding of the High Court to this effect, and indeed no attempt was made before also to substantiate this bald assertion. The Supreme Court, therefore, was unable to accept this contention on the available record. The general approach of the High Court to the problem raised in this case seemed to the Supreme Court to be, broadly speaking, correct. So was its final conclusion. The only observation of the High Court which required consideration was that the sub-section in question contemplated the required number of persons to work in the establishment continuously for one year. On this point, the legal position was clarified in this Judgement. Finally, as the High Court had dismissed the writ petition after clarifying the points of law raised, leaving it to the appropriate authority to finally decide the controversy on a consideration of all the facts and circumstances, the Supreme Court did not propose to say anything more in this appeal which was heard *ex-parte*.

RECOVERY

Maharashtra State Cooperative Bank vs Assistant Provident Fund Commissioner

2009 (10) SCC 123

The short but important question of law before the Supreme Court, in this matter, was whether the sugar bags pledged by a defaulting sugar factory to the appellant bank as a security for the obtainment of a loan would have priority over the Provident Fund dues of the workers of such factory.

The appellant was a cooperative bank operating in Maharashtra which had advanced a loan to one Kannad Sahakari Sakkar Karkhana, a factory engaged in the manufacture of processed sugar, on securing a pledge over the sugar bags stored in the factory's godowns. The repayment of the loan was defaulted, leading to the cooperative bank taking over the possession of the sugar bags. The Sugar factory also defaulted in payment of provident fund dues, leading to the recovery officer's attachment of the said sugar bags under the EPF Act.

Upon challenge of the recovery officer's action, a division bench of the Bombay High Court allowed a joint auction of the said property with payment of the provident fund dues along with interest thereon to the Provident Fund Commissioner as the first charge and payment of the remaining amount to the bank towards satisfaction of its loan.

The cooperative bank challenged the High Court order before the Supreme Court. It was argued before the Court that the stated sugar bags lying in the godown of the sugar mill could not have been attached and sold by the recovery officer as the same were already pledged with the bank and, therefore, did not continue as properties of the defaulting sugar mill.

The Supreme Court considered a catena of previously decided cases and held that pledging the sugar bags did not amount to transferring their ownership to the appellant bank. Further, relying upon section 11(2) of the EPF Act, it was held that the dues towards the provident fund would have the first charge over the assets of the defaulting factory and that pledging of the same with the appellant bank did not alter the effect of such charge. The Court further held that the dues payable under the Act would also include the interest and damages chargeable under sections 7-Q and 14-B of the Act. Consequently, the first charge would also apply to the interest and damages along with the contributions payable under the Act.

EMPLOYEES PROVIDENT FUND COMMISSIONER VS OFFICIAL LIQUIDATOR OF ESSKAY PHARMACEUTICALS LTD

2012 AIR (SC) 11

M/s Esskay Pharmaceuticals Limited was found to be in default of payments. Despite issuing demand notices and orders under Section 8-F of the EPF Act, the company failed to clear the outstanding amount. Meanwhile, the Gujarat High Court had ordered the winding up of the company.

The appellant (E.P.F. Commissioner) approached the Official Liquidator to claim the amount determined under Section 7-A of the EPF Act, but the Official Liquidator did not respond to the request. The appellant's attempt to obtain a directive from the court to compel the Official Liquidator to clear the dues was dismissed. Both the learned Company Judge and the Division Bench of the High Court rejected the appellant's claim, relying on previous judgments that did not support the appellant's argument regarding the amount due from the employer being the first charge on the assets of the company and being payable in priority to all other dues. The matter went into appeal before the Supreme Court.

In this appeal, the central issue revolved around determining whether the priority given to the dues payable by an employer under Section 11 of the EPF Act was subordinate to the provisions of Section 529A of the Companies Act, 1956.

Section 529A of the Companies Act mandated that the 'workman dues' (which included provident fund contribution among other dues such as wages, gratuity etc.) and debts due to secured creditors will rank *pari-passu* and must be paid before all other debts. On the other hand, Section 11(2) of the EPF Act expressly stipulated that if any sum was owed by an employer, whether in relation to the employee's or the employer's contribution, such an amount would be deemed the first charge on the assets of the establishment. Furthermore, notwithstanding any other law, this amount would be paid in priority to all other debts.

If Section 529-A of the Companies Act, 1956 prevailed over Section 11 of the EPF Act, then the Provident Fund dues (for being part of workman dues) would rank *pari-passu, i.e.,* would be on equal footing with the debt of secured creditor, and would not be a first charge on the assets of the Company.

The main argument put forth by the respondent, in this case, was that the statutory priority granted to the dues of employees under Section 11(2) of the EPF Act could not supersede the priority given to the dues of workers and secured creditors under Section 529A(1) of the Companies Act. It was contended that Parliament had intentionally introduced Section 529A(1) in the Companies Act, effective from 24 May 1985, with full knowledge of the priority granted to employee dues under the EPF Act. The argument further suggested that the *non-obstante* clause within the subsequent legislation, namely Section 529A(1) of the Companies Act, would take precedence over a similar clause within the earlier legislation, i.e., Section 11(2) of the EPF Act.

The appellant in the case relied on the judgment in *Maharashtra State Cooperative Bank Ltd. v. Assistant Provident Fund Commissioner (2009)* and contended that the impugned judgment and the order of the learned Company Judge should be overturned. The argument was that the High Court's interpretation of Section 11 of the EPF Act contradicted the precedent established by the Supreme Court. It was asserted that despite the presence of a *non-obstante* clause in Section 529-A of the Companies Act, the provisions therein could not supersede the priority granted under Section 11(2) of the EPF Act, wherein the amount owed by an employer concerning the employees' contributions was considered the first charge on the company's assets and was prioritized over all other debts.

The Supreme Court found that the argument of the respondent that the *non-obstante* clause contained in the subsequent legislation, i.e., Section 529A(1) of the Companies Act, should prevail over a similar clause contained in an earlier legislation, i.e., Section 11(2) of the EPF Act sounded attractive. However, if the two provisions were read in the light of the objectives sought to be achieved by the legislature by enacting the same, it was not possible to agree with it. The objective of the amendment made in the EPF Act in 1973, which introduced section 11(2) of the EPF Act, was to treat the dues payable by the employer as the first charge on the assets of the establishment and to ensure that the same were recovered in priority to other debts. As against this, the amendments made in the Companies Act in 1985 were intended to create a charge *pari-passu* in favour of the workers on every security available to the company's secured creditors to recover their debts.

The Supreme Court, after referring to a series of judgments, emphasised that the amendments to the Companies Act in 1985 were intended to ensure that the rightful payments owed to workers were on an equal footing with those of secured creditors. In essence, these amendments aimed to safeguard the interests of the workers during winding-up procedures by placing them at the same level as secured creditors, establishing a statutory charge concerning their dues on all feasible securities that constituted the company's assets under liquidation.

In order to reconcile the apparent disparities between Section 11 of the EPF Act and Section 529-A of the Companies Act 1956, the Supreme Court clarified that when there was a conflict between the provisions of two Acts, both of which could be viewed as specialized in nature, the resolution must be based on the intention and policy underlying the two Acts and the explicit purpose conveyed by the language of the relevant provisions within them.

In light of the interpretational principle mentioned earlier, the Supreme Court outlined that the amendments introduced by the Parliament, specifically the insertion of provisions like 529A in the Companies Act, did not intend to prioritize the debts due to secured creditors over the dues of provident funds payable by an employer. The court emphasised that the amendments merely served to broaden the scope of the workers' dues, placing them at the same level as the debts owed to secured creditors. The court clarified that the priority of the dues of the workers would be regulated by the provisions mentioned in Section 529(1) alongside Sections 529A and 530 of the Companies Act, ensuring that after the settlement of the amount due from an employer under the EPF Act, other dues of the workers would be treated at par with the debts due to secured creditors. Since the Provident Fund dues were already the first charge before the amendment made in the Companies Act in 1985, it may be gleaned from the Supreme Court arguments that the purpose of the amendment was to raise the status of worker's due on equal footing with secured creditors, and not to reduce the priority of the PF dues. It should be noted that before the amendment of the Companies Act, dues like Government Taxes, etc, were given priority over workers' due.

Consequently, the Supreme Court dismissed the judgment of the Division Bench of the Gujarat High Court, stating that it could not be deemed as laying down the correct law. This decision was made in light of the observations made on the interpretation of Section 11 of the EPF Act and Sections 529, 529-A, and 530 of the Companies Act, clarifying the hierarchical position of the dues of the workers and the debts owed to secured creditors under these provisions.

Maharashtra State Co.op Bank Ltd Vs Kannad Sahakari Sakhar Karkhana Ltd & Others

2013 III CLR 311

This petition was directed against an order of the Division Bench of the Bombay High Court in which the High Court had dismissed the writ petitions filed by the petitioner to quash the action taken by the Assistant Provident Fund Commissioner and Recovery Officer under the EPF Act for the recovery of the provident fund dues.

The petitioner challenged the impugned orders and argued that the sugar bags housed in the godowns of the Sugar Mills could not have been attached and sold at the instance of the Assistant Commissioner for the realization of the dues of the provident fund, etc., as they had already been pledged with the appellant-Bank. The petitioner referred to various clauses of the deeds of pledge and contended that, for all practical purposes, the appellant bank had acquired ownership of the sugar bags, and thus, the Recovery Officer lacked the jurisdiction, power, or authority to attach them. It was emphasized that the term "assets" used in Section 11(2) of the Act denoted unencumbered property of the establishment. It was argued that since the sugar bags, pledged with the appellant bank, had effectively become its property; the Recovery Officer was not entitled to attach them to realise the provident fund's dues, etc. Another point raised by the petitioner was that, at best, the amount determined under Section 7-A could be regarded as the first charge on the assets of the establishment, but the interest payable under Section 7-Q and the penalties imposed under Section 14-B could not be recovered by invoking Section 11(2) of the Act.

The petitioner also argued that the Division Bench of the High Court had made an error by relying on the judgment in *Maharashtra State Co-operative Bank Limited v. Assistant Provident Fund Commissioner and Others*, 2009. The Petitioners contended that the decision in the *Maharashtra State Cooperative Bank Limited* case should be considered as *per incuriam* because, while deciding the matter, the Supreme Court had not considered the provisions of Sections 33-D and 3-E of the Essential Commodities Act, 1955 and various clauses of the Sugarcane (Control) Order, 1966, which imposed a duty on the producer to pay the price of sugarcane to the growers. Lastly, the petitioner argued that the petitioner was a scheduled bank and, therefore, its dues were recoverable in preference to the dues of the provident fund.

The Supreme Court opined that there was no merit in the arguments put forth by the learned Counsel, and consequently, the special leave petitions were liable to be dismissed. The Court carefully examined the deed of pledge between the petitioner Bank and Kannad Sahkari Karkhana Sugar Mill. The analysis revealed that even though the sugar bags held by the Sugar Mill at that time were placed in the custody of the appellant bank as security for repaying the loan with interest, the Sugar Mill remained the owner of the sugar bags. In simple terms, the property's title continued to belong to the Sugar Mill, while only a limited interest was transferred to the appellant bank as security for the repayment of the loan. In essence, the Court elucidated that if the management of the Sugar Mill were to settle the appellant bank's dues within the stipulated timeframe specified in the deeds of pledge, the appellant bank was obliged to release its presumed authority over the sugar bags in the godowns of the Sugar Mill.

Moreover, the Court reasoned that if the sugar bags had indeed become the property of the appellant-bank merely because the Sugar Mill’s management pledged them to secure the loan repayment, there would be no rationale for the Sugar Mill to undertake responsibilities such as hiring godowns on behalf of the appellant-bank, paying rent, or insuring the goods. Similarly, there would be no justification for the management to take on the responsibility of maintaining the godowns at their own cost or granting immunity to the bank regarding the weight, quality, conditions, or safety of the goods. Therefore, the Court concluded that the steps taken by the Sugar Mill's management in preserving and insuring the goods, as well as their agreement to bear the responsibility for any shortage, damage, or shrinkage, indicated that the Sugar Mill remained the rightful owner of the sugar bags, despite providing symbolic custody to the appellant-bank through the lock and key arrangement in the godowns.

Based on numerous other legal precedents, the Supreme Court concluded that the deeds of pledge, executed by the Sugar Mill's management as security for repaying the loan, did not result in the transfer of ownership of the sugar bags to the appellant bank. Consequently, the Recovery Officer did not engage in any unlawful activity by seizing the sugar bags. The High Court's directive to allocate a portion of the sale proceeds to the Assistant Commissioner for settling the provident fund dues of the workers was deemed entirely justified by the Supreme Court.

In the opinion of the Supreme Court, the view taken by the High Court was justified, as the Supreme Court had conclusively decided the issue raised by the petitioner. Therefore, there was no valid ground or justification to overlook the ratio of the law established in *Maharashtra State Coop. Bank Ltd. v. Provident Fund Commissioner* (2009). It was also noted that the provisions of the Essential Commodities Act and the orders framed under it did not relate to the interpretation of Section 11(2) of the 1952 Act, which was inserted in 1973.

PENAL DAMAGES

ARCOT TEXTILE MILLS LTD VS REGIONAL PROVIDENT FUND COMMISSIONER

Citations: 2014 AIR (SC) 295

In this case, the appellant, Arcot Textile Mills Ltd, was a textile company that faced financial difficulties due to a slump in the cotton industry. As a result, they were declared a sick industrial company by the Board for Industrial and Financial Reconstruction (BIFR), with the Industrial Development Bank of India (IDBI) as the Operating Agency. This situation led to delays in the company's contributions to the Provident Fund, which resulted in arrears. The appellant paid the arrears but was subsequently issued a demand for interest under section 7-Q on belated remittances. The company requested a computation sheet on the calculations and sought to reconcile the accounts, but the computation sheet of the proposed interest was not provided. Meanwhile, discussions were held with the Operating Agency and employees, and an agreement was reached to pay the Provident Fund dues in instalments. Despite this, an order demanding interest was issued, along with coercive measures to recover the amount.

The dissatisfied appellant sought relief from the Madras High Court in a writ petition. The single Judge granted an interim stay on the condition that the appellant deposit 25% of the interest amount, which they complied with. Subsequently, the single Judge recommended approaching the tribunal under Section 7-I of the Act, leading to the dismissal of the writ petition. This decision was then challenged before a Division Bench, which upheld the single Judge's view that the order imposing interest on belated Provident Fund payments could be appealed. As a result, the appellant was allowed to seek relief from the appellate authority, and this decision became the subject of the present case through appeal by special leave.

The appellant put forth two main arguments. Firstly, they contended that both the single Judge and the Division Bench made an error in suggesting that an appeal could be made to the tribunal under Section 7-I of the Act, which, according to them, the provisions of the Act did not permit. Secondly, the appellant asserted that the respondent had an obligation to provide the requested documents related to computation, as this would have allowed for the reconciliation of accounts and a fair assessment of the calculation. They argued that the failure to provide these documents violated the principles of natural justice and, as a result, tainted the actions taken.

The Supreme Court held that upon examining Section 7-I, it was evident that the language used was explicit and unambiguous, and it did not permit an appeal against a determination made under Section 7-Q. The court emphasised that the right of appeal is strictly governed by statute and does not inherently belong to anyone. Therefore, for an appeal to be valid, there must be a legal basis for it provided by the law. In essence, the right to appeal cannot be assumed unless expressly granted by the statute, and any appeal must be clearly authorised by the law's provisions. If the words in a provision do not explicitly allow for an appeal from a specific order, the court must adhere to the express language. This underscored the idea that the right to appeal is entirely a product of statutory law.

The Supreme Court provided a clarification regarding certain situations. When the competent authority under the Act determines the amounts owed by an employee, they are required to conduct an inquiry and issue an order. An order under Section 7-A determines the employer's liability under the Act.

During this determination, the competent authority provides an opportunity for the concerned establishment to present its case, including addressing delays in payment and the calculation of interest. If the interest is also calculated with the dues, it's a combined order encompassing both Section 7-A and Section 7-Q. In such cases, where there is a composite order encompassing Section 7-A and Section 7-Q, an appeal can be filed under Section 7-I of the Act. However, if the authority issues a separate and independent order under Section 7-Q for some reason, that specific order is not subject to appeal.

The court emphasised that the concept of natural justice has various aspects, and its application can be broad or narrow, depending on the circumstances. In this context, the court specified that in cases related to computation, which is statutorily provided for, the scope of the inquiry should be limited, considering the extent of the delay. Anything beyond this limited scope is not permissible. The court reasoned that when an independent order is issued, making a demand, the employer should not be left without any remedy and should have the right to file an objection regarding the computation. Therefore, the court held that an objection could be filed to challenge the calculation within a restricted scope, and the Competent Authority should address it in a summary manner.

As for the second contention, the court directed that the computation sheets must be provided to the appellant. In this case, the Supreme Court's judgment reaffirmed the strict adherence to statutory provisions when it comes to appeals and the limitations of the right to appeal under Section 7-I of the Act.

ORGANO CHEMICAL INDUSTRIES & ANOTHER VS UNION OF INDIA

1979 AIR 1803, 1980 SCR (1) 61

This case was a petition filed under Article 32 of the Indian Constitution by M/s Organo Chemical Industries, Sonepat, against an order issued by the Regional Provident Fund Commissioner, Chandigarh. In this order, the Regional Provident Fund Commissioner imposed a penalty on the petitioner as damages under section 14-B of the EPF Act.

The petition challenged the impugned order on two main grounds. Firstly, it argued that Section 14-B was unconstitutional as it violated Article 14 of the Constitution. This was because Section 14-B granted the Regional Provident Fund Commissioner unguided and arbitrary power to impose damages, which could be as high as 100% of the arrears. The absence of clear guidelines rendered Section 14-B constitutionally invalid as it went against the principles of Article 14. Secondly, the petition contended that Section 14-B pertained to the power to recover damages, not penalties. In legal terms, 'damages' should have been related to the actual loss incurred due to delayed payments. Therefore, the authority imposing the penalty or damages should have considered this aspect. Under Section 14-B, a defaulting employer was liable to pay damages that represented the loss suffered by the beneficiaries of the scheme, such as interest recovery, but not more. Anything beyond this should have been considered a penalty, which was not permissible under the section.

The Supreme Court found that the contention that Section 14-B confers unguided and uncontrolled discretion upon the RPFC to impose damages 'as he may think fit' in a manner violative of Article 14 of the Constitution cannot be accepted. It also rejected the argument that no guidelines are provided for determining the quantum of damages. The Court observed that the power of the

RPFC to impose damages under Section 14-B is a quasi-judicial function. This power must be exercised after notifying the defaulter and providing them with a reasonable opportunity to be heard. Furthermore, the discretion to award damages should be within the limits set by the statute. Given the punitive nature of the power under Section 14-B and its significant consequences, an order issued under this section must be a 'speaking order' containing reasons to support it. The Act itself and its various provisions, especially the term 'damages,' provide adequate guidelines for determining liability under Section 14-B, which arises when a default is made. When determining the amount of damages, the RPFC typically considers various factors such as the number of defaults, the duration of delay, the frequency of defaults, and the amounts involved. Therefore, the term 'damages' in Section 14-B provides sufficient guidance for the Commissioner to levy damages and, therefore, cannot be said to be violative of Article 14.

Turning to the second contention, the Supreme Court also addressed the conflict of opinion among different High Courts regarding the interpretation of the term 'damages' in Section 14-B of the Act. Some High Courts believed that 'damages' in Section 14-B referred to the actual loss suffered by the beneficiaries. These damages were meant to compensate the beneficiaries of the scheme for their losses, and the defaulting employer should be liable to pay damages that corresponded to this loss and nothing more. Imposing penalties beyond this would be inconsistent with the section's intent. However, the Supreme Court disagreed with this interpretation. The Court noted that these High Courts had erred by interpreting the word 'damages' in Section 14-B in isolation and a purely legalistic sense. Instead, the Court emphasized that the interpretation should align with the objectives and purpose of the legislation. In this context, the term 'damages' should not be narrowly construed as in contract or tort law but should reflect its true meaning, which is consistent with the scheme's purpose.

The Supreme Court observed that the traditional view of 'damages' as merely meaning actual loss does not adequately consider the social and economic context of a provision like Section 14-B within socio-economic legislation such as the Act in question. The Court noted that the very purpose of the legislation would be defeated if the term 'damages' in Section 14-B of the Act was not construed to encompass penal damages. The imposition of damages under Section 14-B serves a dual function. It not only compensates for harm but also acts as a deterrent. The primary objective is to penalize defaulting employers to discourage them from making further defaults in the future.

In this context, the Court highlighted that nothing within Section 14-B indicates damages must be directly proportional to the loss suffered by the beneficiaries of the Schemes. The term 'damages' in Section 14-B is closely tied to the term 'default.' And in the context of Section 14-B, the word 'default' should be understood to mean a 'failure in performance' or a 'failure to act.' Therefore, the primary objective of section 14-B is to deter such default.

In conclusion, the Supreme Court's interpretation recognizes that the primary objective of Section 14-B is to penalize employers for their defaults, thereby ensuring the effective operation of schemes aimed at safeguarding the interests of workers and employees. This interpretation aligns the legal meaning of 'damages' with the overarching goals of social and economic welfare embedded in the legislation, upholding employee rights and protections as intended by the law.

Hindustan Times Limited vs Union of India

(1998) SCC (L&S) 481

The judgment pertains to an appeal filed in response to the Delhi High Court's ruling on a writ petition initiated by M/s Hindustan Times Limited. The writ petition aimed to contest a decision made by the Regional Provident Fund Commissioner, which imposed damages on the Petitioner due to delays in remitting the EPF contributions.

The case unfolds against the following backdrop. The Appellant, an employer, received a notice from the Department on March 23, 1971, due to delayed payment of provident fund contributions for specific periods. The Department sought clarification on the timing of cheque submission. Subsequent exchanges occurred, leading to a show cause notice on March 24, 1979, proposing recovery of damages for the mentioned period. The Appellant replied on February 5, 1980, disputing certain aspects. The final order, dated May 7, 1980, levied damages, differing slightly from the initial notice. In this appeal, the employer's Senior Counsel argued that the demand notice issued on 7.5.80 for alleged late payments from 1965 to 1968 was arbitrary and should be considered waived since it was dropped in 1971.

The Supreme Court examined various aspects of the case, including the legislative framework, the absence of a specified limitation period for initiating action under section 14-B, and the principle of reasonableness concerning delays in taking action. The judgment highlighted that the legislative intent did not provide a specific limitation period for computing and recovering the arrears.

The Court also addressed the question of prejudice due to delay and distinguished between the nature of prejudice faced by the defaulting employer and the general concept of prejudice in legal contexts. The judgment emphasised that delays in such cases primarily benefit the defaulter, who has used funds that did not belong to them. It stressed that it is not appropriate for a defaulter to claim prejudice due to the delay.

Additionally, the Supreme Court provided several key guidance and principles:

1. *No Prescribed Limitation Period*: The Court emphasised that no specific limitation period is prescribed by legislation for initiating action or assessing damages under Section 14-B of the Employees Provident Fund & Miscellaneous Provisions Act, 1952.

2. *Reasonable Opportunity and Principles of Natural Justice*: The authority under Section 14-B must give the defaulting employer a reasonable opportunity of being heard and must pass a reasoned order, following the principles of natural justice.

3. *Factors Considered for Damages*: The authority typically considers factors such as the number of defaults, the period of delay, the frequency of default, and the amounts involved when determining damages for delayed provident fund contributions.

4. *Prejudice Due to Delay:* The Court distinguished between the nature of prejudice faced by the defaulting employer and the general legal concept of prejudice. Mere delay in initiating action doesn't constitute prejudice unless there is evidence of irretrievable prejudice or loss of essential records.

5. *Claim of Irretrievable Prejudice*: If a defaulting employer claims irretrievable prejudice, they must prove it by demonstrating changes in their

position to their detriment or other circumstances, making the delay prejudicial in an irretrievable manner.

6. *Defaulter's Use of Funds*: The Court stressed that delays in initiating action primarily benefit the defaulting employer, who has used funds that do not belong to them. Claiming prejudice due to this delay is not appropriate. Whether general or irretrievable, the claims of prejudice must be raised in defence during the reply to the show cause notice. The defaulter must satisfy the concerned authority with acceptable material to support their claims.

Ultimately, the Court dismissed the appeal, affirming the imposition of damages on the Petitioner for delayed remittance of provident fund contributions.

M/s K. Streetlite Electric Corporation Vs Regional Provident Fund Commissioner
[Civil Appeal Nos.6498 of 1998]

The Appellant contested the delay in days, the rate at which damages were levied and the amount calculated. The Appellant contended that the order of damages imposed upon the establishment was violative of the instructions issued by the Central Government under Section 20 of the Act that the damages at the rate of 25% can be levied and that the order was passed at a very belated stage as for the period ending in July 1976 the notice has been issued in the year 1987.

The Appellant filed a writ petition before the High Court, which was rejected. The Court heard both the parties. The Court examined the scheme of the Act's provisions concerning delay in passing the order. The Court ruled that the mere fact of proceedings are initiated. The demand for damages made after several years cannot be the basis wherein the employer was lulled into believing that no proceedings under Section 14-B would be taken. The delay cannot amount to prejudice as such delay would allow the employer to use the monies for his own purpose or his business when there is no additional provision for charging interest on such an amount. The Court, however, ruled that the employer can claim prejudice if there is proof that during the period of delay and initiation of proceeding, the employer has altered his position to his detriment to such an extent that if the recovery is made after a large number of years, the prejudice to him is of irretrievable nature and such prejudice can also be established by stating reason of non-availability of records of the personnel by which evidence it could be established that there was some basis for delay in making the payments.

The Court held that the second contention need not be examined in the view it proposes to take in the matter. The Court held that even if it had that the Central Government instructions were not binding on the respondent, in assessing the damages, it would be necessary to decide the manner and correct rate of damages. The Court went through the statement of calculation and found that different rates of damages are levied, and it was not possible to discern the rationale adopted by the respondent. Considering the facts and circumstances, the Court confined the damages leviable in this case to an overall consideration of 25% of the total damages imposed.

Horticulture Experiment Station, Gonikoppal vs The Regional Provident Fund Organisation

[Civil Appeal No.2136 of 2012]

In this matter the Supreme Court considered whether presence of *mens rea* would be an essential element for imposition of damages under section 14B.

The case's background facts are as follows: The Appellant establishment, covered by the Act 1952. The Appellant had made an unsuccessful attempt to contest the legality of the Central Government Notification that included the institution under the EPF Act. As a result, they were required to pay the outstanding amounts retrospectively. After proceedings under Section 7-A, EPF contribution dues for that period were assessed and paid. Subsequently, a notice under Section 14-B of the Act 1952 was issued for damages due to delayed provident fund payment.

The Appellant challenged the penal damages order because they had remitted the dues immediately on assessment, and their previous delay in remittance was not willful. The High Court held that once the default in payment was admitted, damages under Section 14-B were consequential, and the employer was obliged to pay for the delay in EPF contribution. This decision was challenged in the present appeal.

In the Supreme Court, the Appellant argued that the inclusion of *mens rea* or *actus reus* is a fundamental aspect overlooked by the authority when imposing penalties under Section 14-B of the Act 1952. The Appellant drew upon the precedent set by the Supreme Court rulings in the cases of *McLeod Russel India Limited vs Regional Provident Fund Commissioner, Jalpaiguri and others* [(2014) 15 *SCC* 263] and *Assistant Provident Fund Commissioner vs RSL Textiles*

India Pvt. Ltd [(2017) 3 *SCC* 110]. In these cases, the Supreme Court held that the presence or absence of *mens rea* or *actus reus* would be a determinative factor in imposing damages under Section 14-B of the Act. The Court emphasised that the imposition of damages is flexible; the quantum of damages should be influenced by whether *mens rea* and/or *actus reus* prevailed at the relevant time.

The Appellant also relied on the Supreme Court judgement in *Dilip N. Shroff v. Joint Commissioner of Income Tax, Mumbai and another* [(2007) 6 *SCC* 329] where it was held that for imposing penalties for violation of civil liabilities, the existence of mens rea was a necessary ingredient. These cases established that mens rea was deemed a crucial factor for imposing penal damages.

However, in a series of decisions, the Supreme Court has consistently held that mens rea or actus reus is not essential for imposing penalties for breaching civil obligations or liabilities. Notably, in *Chairman, SEBI v. Shriram Mutual Fund and another*, [(2006) 5 *SCC* 361], the Supreme Court reiterated that mens rea is not a necessary element for imposing civil penalties, particularly in cases involving breaches of provisions related to securities market regulations. The Court emphasised that once a contravention of statutory obligations is established, penalties are attracted, and the intent of the parties committing the violation becomes irrelevant. Whether the contravention was intentional or not is immaterial in determining the imposition of penalties.

The Supreme Court observed that in the case of *Union of India v. Dharmendra Textile Processors and others* [(2008) 13 *SCC* 369], a three-judge bench examined the extent and interpretation of Section 271(1)(c) of the

Income Tax Act, 1961. The Court determined that for penalties imposed for violation of civil liabilities under the mentioned provisions, the presence of *mens rea* or *actus reus* is not necessary. This judgment overturned the earlier ruling in *Dilip N. Shroff v. Joint Commissioner of Income Tax, Mumbai and another* [(2007) 6 *SCC* 329].

Initially, the Supreme Court, in the case of *McLeod Russel India Limited Vs. Regional Provident Fund Commissioner Jalpaiguri and others* emphasised the necessity of mens rea to impose penal damages under Section 14-B of the EPF Act. However, the Court altered its stance in the Horticulture Experiment Station case, asserting that *mens rea* is not mandatory for imposing penal damages under Section 14-B of the EPF Act. The Supreme Court noted that the *sine qua non* for imposing damages under Section 14-B of the EPF Act is any failure or delay by the employer in making EPF contributions.

Regional Provident Fund Commissioner Vs. S.D. College

1997 AIR (SC) 3645

SD College,Hoshiarpur, was an Educational Institution brought under the fold of EPF and MP Act, 1952 by the Regional Provident Fund Commissioner following a notification of the Central Government notifying 'educational institution' as a scheduled head. The college challenged the said notification on the grounds that it was not applicable to them. The Supreme Court held that the college is coverable under the scheduled head. However, owing to the circumstances, it directed the RPFC not to levy any damages for the period of dispute, and the members would not be eligible for any interest during such period.

The college did not comply with the orders of the Supreme Court and parked the contributions in a fixed deposit. Subsequently, RPFC has levied damages at the prescribed rates. Aggrieved, the college approached the High Court, which held that damages were not to be levied. EPFO filed an SLP before the Supreme Court.

The respondents submitted that the delay in complying with the orders of the court was due to a delay in obtaining the permissions from the University. And that the contributions were remitted to RPFC along with the rate of interest earned in fixed deposits.

The Court held that the RPFC has only the power to alter the rate at which penalty has to be levied. He has no power to waive the damages altogether. Accordingly, the court upheld the order of RPFC levying the damages and directed the respondent to deposit the balance due with EPFO.

McLeod Russel India Limited Vs Regional Provident Fund Commissioner

Civil Appeal No 4188 of 2013

M/s Mathura Tea Estate, owned by Saroda Tea Company Ltd., was an establishment covered by the EPF Act. The establishment defaulted in remitting the contributions and accumulations payable under the Act. Under the circumstances, the Regional Provident Fund Commissioner issued notices to show cause against the imposition of 'damages' under Section 14-B of the Act. In the duration of proceedings, management of M/s Mathura Tea Estate under the ownership of Saroda Tea Company Ltd. was taken over by Eveready Industries (India) Ltd. which paid the entire principal sum of provident fund dues pertaining to the period prior to the takeover in consonance with the Memorandum of Understanding (MoU). The MoU included a clause that any damages payable for the failure to deposit the dues and accumulations under the EPF Act would be the exclusive liability of Saroda Tea Company Ltd. It is in these premises, that Eveready Industries (India) Ltd. contended that proceedings under Section 14-B of the Act against it were unjustified as it was not the 'employer' defined under Section 2(e) of the EPF Act, which defaulted in paying contributions. The respondent held that a conjoint reading of the Section 14-B and 17-B of the EPF Act clearly indicates that damages under Section 14-B were recoverable jointly and severally from Saroda Tea Company Ltd. as well as Eveready Industries (India) Ltd. The RPFC assessed the damages and issued the order to this effect. Eveready Industries (India) Ltd had in the interregnum of this litigation changed its name to Mcleod Russel India Ltd.

The appellant challenged the order of the RPFC before the High Court at Calcutta which set aside the order. Appellant filed Civil Appeal before the Supreme Court. Court heard both the parties. The appellant submitted that the liability was of the erstwhile management and since the petitioner was not the 'employer' at the relevant time, default much less deliberate and wilful default on the part of the petitioner was absent. The Court rejected the submission by the Counsel of the appellant sought from *ESIC Vs HMT Ltd* [(2008) 3 *SCC* 35]. The Court relied on the judgement of the special bench of the High Court of Calcutta in Dalgaon Agro Industries Ltd. and discussed a decision in the case of *Sayaji Mills Ltd Vs Regional Provident Fund Commissioner*, [1984 (Supp) *SCC* 610]. The Court discussed in detail and relied upon, the two-judge bench decision in the *Organo Chemical Industries Vs Union of India* [(1979) 4 *SCC* 573].

The appellant submitted that damages levied in terms of Section 14-B cannot be foisted onto his clients. Sections 14, 14-A, 14-AA, 14-AB and 14-AC of the EPF Act are the provisions postulating prosecution wherein Section 14-B contemplates the power to recover from the employer by way of penalty such damages, not exceeding the amount of arrears, as may be specified in the Scheme.

The Court categorically held that criminal liability remains steadfastly fastened to the actual perpetrator and cannot be transferred by any compact between persons or even by statute. The Court further clarified that '*modern jurisprudence recognizes that the imposition of punitive damages, quintessentially quasi-criminal in character, can be resorted to even in civil proceedings to deter wilful wrongdoing by making an admonished example of the wrongdoer. This is the essential purpose, it seems to us, of Section 14-B of the EPF Act, and an imposition within its confines does not assume criminal* *prosecution so as to stand proscribed insofar as transfer of establishment from one management/employer to its successor is concerned.'*

The Court rejected the argument that damages postulated in Section 14-B would not be transferable under Section 17-B as the statute specifically speaks of 'the contributions and other sums due from the employer under any provision of this Act or the Scheme'. The proviso to Section 17-B indeed clarifies the position in as much as it restricts and/or limits the liability of the transferee upto the date of the transfer and to the value of the assets.

The Court held that '*the argument that the phrase "determination of amounts due from the employer" is found in Section 7-A as well as in Section 17B is not factually correct. Section 17B speaks of "contributions and other sums dues from the employer under any provision of this Act……". the latter section is, therefore, wider in ambit than the previous one*'. The Court held that Section 14-B is complete in itself so far as computation of damages is concerned. The Court also held that in the wake of the numerous and different dates of amendments, that Section 7-A (2) would also be available to proceedings under Section 14-B of the Act. The applicability of Civil Procedure Code, 1908 to proceedings under Section 14-B has not specifically barred by the statute. The Court found the appeal devoid of any merit however refrained from imposing costs.

PENAL PROVISIONS

Srikanta Datta Narasimharaja Wadiyar vs Enforcement Officer

1993 AIR 1656, 1993 SCR (3) 508

The common question of law that arose before the Supreme Court in 18 Criminal Appeals was of whether a Director of a Private Company, who is neither an occupier nor a manager, can be prosecuted under Section 14(A) of the EPF Act, 1952 for violation of the Provident Fund Scheme.

The appellant was one of the Directors of a Company registered under both the Companies Act and Factories Act. The respondent (an Enforcement Officer) instituted 18 complaints against six accused, including the appellant and the Company employer, for the failure to deposit the contribution to the Provident Fund Account under the Act, 1952, Employees Provident Fund Scheme 1952 and Schemes framed thereunder, for offences punishable under Section 14A of the 1952 Act read with para 76 of the 1952 Scheme.

On the Magistrate taking cognizance of the complaint, the appellant filed Criminal Miscellaneous Petitions in the High Court for quashing the complaint as they did not contain the relevant averments constituting offences against the appellant. Reliance was placed on the definition of 'employer' in Section 2 (e) of the Act and the liability that had been fastened on the Managing Director or the Manager or occupier of the establishment to abide by the Act and the Schemes. The High Court dismissed the applications.

The appellant appealed to the Supreme Court and contended that the reading of the definition of 'employer' in section 2(e) of the Act with Sections 30, 14(1a) and para 31 of the Scheme demonstrate that the employer in relation to the establishment means the owner or occupier of the factory which includes the Agent or the Manager of the factory under the Factories Act, that there was an occupier and Manager recorded for the instant company, and that they were Incharge of and were solely responsible to comply with the Act and the Schemes thereunder and that no specific averments have been made in the complaint making the appellant responsible for the management of the factory or the liability to comply with the Act and the Schemes. Therefore, the complaint against the appellant was illegal, and a manifest error of law vitiated the cognizance taken by the Magistrate.

The Supreme Court perused/examined the relevant definitions and provisions under the Act and the Scheme. Para 76 of the Scheme fastens criminal offence for non-compliance with the provisions of the schemes on the persons in-charge of and responsible for the management or control of the establishment. Every person who, at the time the offence was committed, was In-charge of and was responsible to the establishment for the conduct of its business and the company shall be liable to be proceeded against and punished accordingly. Form 5-A, read with para 36A, gives an option to the employer to furnish particulars of ownership and the branches of the department, owners, occupiers, directors, partners, manager or other person or persons who have ultimate control over the affairs of such factory or establishment in-charge of and responsible for the conduct of the business of the company and compliance of the statutory obligation fastened under the Act and the relevant schemes. The purpose of giving details of the owners, occupiers, directors, etc., is not an empty formality but a deliberate intent to widen the net of responsibility on any and every one for any act or omission. It is made mandatory to the employer to abide by the same, and non-compliance thereof is liable for prosecution under Section 14A of the Act.

In the instant case, the appellant has declared himself as one of the persons In-charge of and responsible for the conduct of the business of the establishment or the factory in Form 5-A, the complaint and non-compliance thereof having been enumerated in para 3 of the complaint, it was validly made against the appellant along with other accused for the alleged contravention. Necessary allegations bringing out the ingredient of offence have been made out in the complaint. Therefore, the Magistrate has rightly taken cognizance of the offence alleged against the appellant.

The Supreme Court also considered and distinguished *Municipal Corporation of Delhi vs Ram Kishan Rohtagi and others* [1983] 1 *SCC* 1 and *Employees' State Insurance Corporation vs. Gurdial Singh and others* [1991] Supp. 1 *SCC* 204.

Sections 14 and 14-A provide for penalties. The one applies to whosoever is guilty of avoiding payment of provident fund and to the employer if he commits a breach of provisions mentioned in its various clauses, whereas Section 14-A fastens liability on certain persons if the persons committing the offence, is a company. The scope of the two sections is the same. The latter is broader in its sweep and reach. The former applies to anyone who is an employer or owner or is himself responsible for making payment, whereas the latter fastens the liability on all those liable or in charge of the company for the offence committed by it.

Sub-sections (1) and (2) of Section 14-A extend the liability for any offence by any person, including a partner, by virtue of explanation if he was in-charge or was responsible to the company at the time of committing the offence. The expression, '*was in charge of and was responsible to the company* *for the conduct of the business'*, is very wide in its import. It could not, therefore, be confined to the employer only.

To say, therefore, that since paragraph 36-A requires an employer to do certain acts, the responsibility for any violation of the provision should be confined to such employer or owner would be ignoring the purpose and objective of the Act and the extended meaning of 'employer' in relation to establishments other than the factory. The declaration, therefore, in Form 5A in the instant case, including the appellant as one of the persons in charge and responsible for the affairs of the company, was in accordance with the law. Therefore, his prosecution for violating the scheme does not suffer from any error of jurisdiction or law.

BHAGIRATH KANORIA AND OTHERS VS STATE OF M.P

1984 (4) SCC 222, 1984 AIR 1688

In these connected Criminal Appeals, a common question of general public importance was raised before the Supreme Court regarding whether failure to pay the employers' contribution to the Provident Fund under the EPF Act, 1952 is a continuing offence.

The facts of these appeals varied from case to case, but treating such variation inconsequential for the purpose, the Supreme Court stated the facts of a representative group of these cases comprised Criminal Appeals Nos—407-418 of 1979. Appellants 1 to 3 were Directors, and Appellant 4 was the Factory Manager of a Company called M/s Burhanpur Tapti Mills Limited, an exempted establishment under Section 17 of the Act, which was itself Respondent No. 2 in these appeals. Provident Fund Inspector, Indore, Madhya Pradesh, filed six complaints for non-payment of employers' contributions against the appellants and Respondent No.2 under section 14 (2A) of the Act.

At the commencement of the trial, the accused filed applications contending that since the limitation prescribed by section 468 of the Code of Criminal Procedure, 1973 had expired before the filing of the complaints, the Court had no jurisdiction to take cognizance of the complaints. These applications were rejected by the Judicial Magistrate on the ground that the offences of which the accused were charged are "continuing offences" and, therefore, no question of limitation could arise. The Single Judge of the High Court upheld this trial court order in the revision petitions filed by the appellants. Being aggrieved, Appellants filed criminal appeals in the Supreme Court.

The Appellants contended that the offence of non-payment of the employer's contribution could be committed once and for all on the expiry of fifteen days after the close of every month and, therefore, prosecution for that offence must be launched within the period of limitation provided in section 468 of the Cr.P.C.

After considering provisions under Sections 468, 472 and 473 of Cr.P.C. and contentions made by the Appellants, the Court remarked that it was impossible to accept the contentions made. The code did not define the expression 'continuing offence' because expressions that did not have a fixed connotation or a static import were difficult to define. The question of whether a particular offence was a continuing offence must necessarily depend upon the language of the statute which created that offence, the nature of the offence and, above all, the purpose intended to be achieved by constituting the particular act as an offence. *State of Bihar v. Deokaran Nanshi,* [(1973)1 SCR 1004], discussed.

Considering the offence of which the appellants are charged, namely non-payment of the employer's contribution to the Provident Fund before the due date and the object and purpose of this provision, which is to ensure the welfare of workers, the Court remarked that this offence is a 'continuing offence' and, therefore, the period of limitation prescribed by section 468 of the Cr. P.C cannot have any application. The offence alleged against the appellants will be governed by section 472 of the Cr.P.C, according to which, a fresh period of limitation begins to run at every moment of the time the offence continues. The concept of 'continuing offence' does not wipe out their original guilt and keeps the contravention alive daily.

As a result, these appeals were dismissed by the Supreme Court.

N.K. Jain And Others vs C.K. Shah And Others

1991 AIR 1289: 1991 SCR (1) 938

The question of general importance that arose in these three appeals was whether criminal proceedings could be instituted under Section 14 of the EPF Act against an establishment exempted under Section 17 of the Act for the contravention of the provisions of Section 6 of the Act.

The appellants, who were common in each of these three appeals, were connected with the management of M/S Shri Subhlaxmi Mills Ltd. (hereinafter referred to as the "said Company"), an establishment governed by the Act but exempted under section 17 of the Act. Admittedly, the exemption continued to be in operation at all material times. In Criminal complaints filed in the Court of the Judicial Magistrate Cambay, the allegation was that the appellant, despite being in charge of the management, had failed to pay the contributions to the provident fund trust and thereby committed offences punishable under Sections 14(1A), 14(2), 14(2A), 14A(1), 14A(2) and Paragraph 76 of the Employees' Provident Fund Scheme, 1952. The criminal complaints, pursuant to an order of the High Court, were transferred to the Court of the Second Metropolitan Magistrate, Ahmedabad. The appellants' plea before the lower Courts was that Section 6 of the Act did not apply to the establishment exempted under Section 17 of the Act, and therefore, no proceedings under Section 14 can be initiated against them. The learned Metropolitan Magistrate's order dated 28th November 1978 rejected the abovementioned application. Being aggrieved, they filed three criminal revision applications in the Court of the Additional Sessions Judge, Ahmedabad, who, by a common order, dismissed the same, taking the view that Section 6 of the Act covers and attracts all the establishments, including the exempted establishment. The present appeals have been filed against that order in those three revision applications.

The submission before the Supreme Court by the appellants was that none of the Sections of the Act mentioned in the complaints can be applied against the appellants since the establishment in question is exempted under Section 17 of the Act and consequently is not governed by the EPF Scheme nor by Section 6 of the Act. According to the Appellants, the Act did not provide for prosecution regarding any of the offences enumerated under Section 14 in case of breach by an exempted establishment in not paying the provident fund contributions to the trust. Therefore, no prosecution can be launched. If the establishment's management had not deposited the provident fund contributions with the exempted trust, the Government was empowered only to cancel the exemption, which also amounts to a penalty.

The Supreme Court held that Section 14(2) was not attracted as it dealt with the Family Pension or Insurance Scheme. Similarly, paragraph 76 of the EPF Scheme also was not applicable because the establishment was admittedly exempted from the operation of the scheme. The Supreme Court also held that Sections 14A(1), 14A(2) and 14AA, which are also mentioned in the complaints, are not attracted.

While deciding whether cancellation of exemption under Section 17(4) of the Act is a penalty or not, the Supreme Court observed that:

> In common parlance, the word 'penalty' is understood to mean a legal or official punishment such as a term of imprisonment. In some contexts, it is also understood to mean some other form of punishment, such as a fine or forfeiture for not fulfilling a contract. But in gathering the meaning of this word, the context in which this is used is significant. In the Act, as already noted, Section 14 deals with penalties and enumerates various

contraventions or non-compliances which are punishable with imprisonment. Every contravention mentioned in each of the sub-sections is punishable with imprisonment, and for offences covered by Sections 14(1A), 14(1B) and 14(2A), minimum imprisonment is also made compulsory. The imposition of a fine is also prescribed. The penalties mentioned in this connection would indicate that the Legislature envisaged that a penalty should necessarily mean imprisonment or at least the imposition of a fine. We find from the reports that the National Commission of Labour having found that the working of the Employees' Provident Fund and Family Pension Fund Act, 1952 are not effective and that in order to check the growth of arrears penalties for defaults in payment of provident fund dues should be made more stringent, and the default should be made cognizable. Accordingly, it was proposed to amend the Act so as to render penal provisions more stringent and to make defaults cognizable offences, and provisions were also made for compulsory imprisonment in case of non-payment of contributions and administrative and inspection charges. The provisions of the Act thereafter are suitably amended. We must bear this object and reasons in mind in examining whether a mere cancellation of the exemption granted under Section 17(4) would amount to a penalty. No doubt, under Section 14(2A), one of the requirements is that "there should be no other penalty elsewhere provided by or under the Act for such contravention or non-compliance," but we are not persuaded to hold that the mere cancellation of an exemption amounts to a penalty particularly expected to be stringent as contemplated under Section 14.

Accordingly, it was held that the cancellation of the exemption granted under Section 17(4) did not amount to a penalty under the Act within the meaning of Section 14(12A). Therefore, the Supreme Court held that Sections 14(IA) and 14(2A) were attracted to the facts in the present case.

Provident Fund Inspector Vs Aimil Pharmaceuticals & Others

[SLP No. 3737 of 2019]

Section 14 AC of the EPF Act provides for prior sanction by Central Provident Fund Commissioner (CPFC) or an officer authorised by Central Government for a court to take cognizance of a prosecution petition. The Central Government vide notification no. S.O.549(E) has authorized Regional Provident Fund Commissioner (RPFC) also as an authority to sanction the filing of a prosecution petition.

M/s Aimil Pharmaceuticals failed to pay the statutory dues under the EPF Act. Consequently, RPFC-II had assessed the dues under section 7-A of the EPF Act and directed the company to pay the dues. Meanwhile, petitions of prosecution were filed against M/s Aimil Pharmaceuticals before the Metropolitan Magistrate for default in payment of dues under the Act. The Respondents approached the High Court against the prosecutions invoking the provisions of Section 482 of Cr.P.C. The appellants contested that the dues were paid as directed in the order under section 7-A and not delayed as charged in the prosecution petition. Also, it was argued that the sanctioning authority cannot be RPFC-II as the notification issued by the Central Government is applicable only to the RPFC-1. Agreeing with the arguments of the petitioner, the Hon'ble High Court held that the prosecution petition was premature and only the RPFC in-charge of the region was authorised to sanction prosecution.

EPFO filed an SLP in the Supreme Court challenging the order of the High Court. While differentiating the absence of a sanction and a defective sanction, the court held that the legality or validity of a sanction should be done in the course of a trial. In the present case, the Metropolitan Magistrate is the trial court, whereas the Hon'ble High Court has used inherent powers under section 482 of Cr.P.C to quash the criminal cases.

Accordingly, the Supreme Court quashed the order of the High Court and allowed the prosecution petitions to continue in the trial court.

RABINDRA CHAMARIA VS REGISTRAR OF COMPANIES, WEST BENGAL

1992 AIR (SC) 398

The common point/question that arose before the Supreme Court, in connected Civil Appeals & Special Leave Petition, for consideration was as to the "scope" of Section 633 of Companies Act, 1956 to grant relief from liability for default, negligence, etc.

As there was only one common point/question before the Supreme Court for consideration, it only referred to the facts in Civil Appeal No. 3012 of 1990. The appellants in this matter were Directors of a Company (Eastern Manufacturing Company Ltd.) owning a Jute mill. Due to strikes, labour unrest and lock-out, the Company defaulted in paying the provident fund dues under the EPF Act, 1952. The appellants filed a petition before the High Court under Section 633 of the Companies Act, 1956, for being relieved of liability for delayed and non-payment of the provident fund and other ancillary dues. A consent order was passed by a Single Judge allowing the outstanding provident fund dues to be paid in monthly instalments of ₹ 50,000 until the entire liability was paid off. Further, considering Prayer-B, an injunction was also granted restraining the respondents from initiating any criminal proceedings against the appellants or any of them for non-payment or delayed payment of the provident fund.

Being aggrieved, the first respondent in this case (Regional Provident Fund Commissioner) filed appeal No 286 of 1987 before the Division Bench, where the sole point for determination waswhether the learned Single Judge was right in granting relief under Section 633 of the Companies Act in respect of offences committed under the Employees Provident Fund and Miscellaneous

Provisions Act of 1952. The Division Bench held that any proceeding referred to in section 633 of the Companies Act would mean only under the provisions of the Act and that section 633 of the Act had no application in respect of any liability under any other Act. The order of the Single Judge was set aside. The Applications claiming relief under Section 633 of the Act were also dismissed in the connected cases, resulting in the filing of these appeals and a Special Leave Petition before the Supreme Court.

The appellants' contentions in Civil Appeal No. 3012 of 1990 were that section 633 was very wide in its amplitude, and there was no justification to restrict its application to only proceedings arising under the Companies Act. Further, it was submitted that when proceedings were taken in relation to breach of trust, an offence under the Indian Penal Code, against an officer of a company, it would be open to him to plead before the concerned Magistrate that he had acted honestly and reasonably, and if the Court concluded that he should fairly be excused, the Court would relieve him. Further, under sub-section (2), it was an anticipatory action, and the High Court also exercised a similar power as the Court was exercising power under subsection (1). If it was restricted only in respect of any liability under the Companies Act, then the protection extended under Section 633 was lost. Similarly, Section 32 of the Industrial Disputes Act dealt with offences by Companies under that Act, where the burden was upon the person concerned to prove that the offences were committed without his knowledge or consent and, but for that proof, the statute deemed him to be guilty. It was further urged that if protection were not afforded to the appellants against such a sweeping provision under Section 32, the entire purpose of Section 633 of the Companies Act would be rendered nugatory. In addition, the Appellants in Civil Appeal No 3117 of 1990 referred to Section 2(11) of the Act and submitted that the definition of "Court" contemplated with respect to any matter relating to a company and that the Court having respective jurisdiction as provided under Section 2(11) was with respect to any offence under the Act, the Court of a first-class Magistrate or, as the case may be, a Presidency Magistrate having jurisdiction to try such offence. This section would show that where, like the appellants, they were not working directors, they could not be subject to prosecution, and that was where Section 633 of the Companies Act stepped in and afforded protection, even if it was a liability arising under any other Act, for instance, like delayed payment or non-payment of provident fund.

The Respondent (Regional Provident Fund Commissioner) contended that any proceeding under Section 633 of the Companies Act could not relate to a proceeding other than one arising out of the Companies Act. Each of the other Acts not only defined a penalty but also laid down the penalty. Therefore, merely because the appellants were officers of the company, it could not mean that Section 633 of the Companies Act could be availed of, and further contended that otherwise, the consequences would be disastrous. The penal provision of all other Acts would be rendered ineffective by the interpretation pressed for an acceptance. Additionally, it was submitted that Section 14 of the EPF Act, 1952 laid down the penalties for the offences of companies as dealt with in Section 14-A. The explanation to Section 14-A also talked of what a company would mean for the purpose of the section and, therefore, where an elaborate procedure was contemplated under those sections for recovery of the dues and the Provident Fund Act, being a social welfare legislation, that could not be rendered illusory by extending the benefit under Section 633 of the Companies Act.

The Supreme Court perused in detail provisions under Section 633 of the Companies Act, 1956 (along with Section 281 of the old Companies Act, 1913) and then observed that the expression 'any proceeding' occurring under Section 633 cannot be read out of context and treated in isolation. It must be construed in the light of the penal provisions. Otherwise, the penal clauses under the various other Acts would be rendered ineffective by application of Section 633. Again, if Parliament intended Section 633 to have a coverage wider than the Act, it would have expressly provided for it. Moreover, it is a sound rule of construction to confine the provisions of a statute to itself.

Further, it observed that while referring to any proceeding under sub-section (2) of Section 633, the Parliament intended to restrict it only to the proceeding arising out of negligence, default, breach of trust, misfeasance or breach of duty in respect of duties prescribed under the provisions of the Companies Act. Further, examining the subsection concerning the context and the placement of the sub-section, the only possible conclusion is the proceedings for which relief under this sub-section could be claimed or the proceedings against the officer of a company for breach of the provisions of the Companies Act. Subsection (2) cannot apply to proceedings instituted against the officer of the company to enforce the liability arising out of violation of provisions of other statutes. Sub-section (3) requires notice to be given to the Registrar of Companies. This indicates that powers under sub-section (2) must be restricted in respect of proceedings arising out of the violation of the Companies Act. Merely because Section 32 of the Industrial Disputes Act contains a stringent provision, it cannot be held that Section 633 of the Companies Act could be invoked for offences under Section 32 of the Industrial Disputes Act.

Afterwards, the Bench referred to corresponding English law provisions (i.e., Section 448 of the Companies Act, 1948 and Section 727 of the Companies Act, 1985) and case law *[Customs and Excise Comrs. v. Hedon Alpha Ltd. (1981)*

QB 818, (1981) 2 All ER 697, CA.] and concluded that under Section 633 of the Companies Act, relief cannot be extended in respect of any liability under any Act other than the Companies Act.

After that, the Bench also perused in detail provisions under Sections 14 and 14-A of the EPF Act, 1952, dealing with penalties for the offences and offences by companies, respectively. The Bench observed that the authority to take action under the Provident Fund Act, as seen from Section 14 of the said Act, is a Commissioner, while the procedure under Section 621 of the Companies Act is that on a complaint in writing of the Registrar or of a shareholder of a company, or of an officer authorised by the Central Government in this behalf that action can be taken. As it was mandatory for the Court under provisions of sub-section (3) of Section 633 to give notice to the Registrar of Companies or such other person, if any, as it thought necessary, if Section 633 were interpreted as to include proceedings under Acts other than the Companies Act it would be open to the Court to give such relief under this Section without providing notice to the authority competent to prosecute in respect of liabilities under the other laws or upon providing notice to other concerned and not the Registrar. Thus, the mandatory requirement of sub-section (3) can easily be bypassed.

The Bench observed that officers of the Company, as per provisions of subsection (1) of Section 14-A of the Provident Fund Act, would be deemed guilty of the offence. If the relief under Section 633 is extended, such officers or persons who are otherwise liable for such an offence would benefit from Section 633 and escape the rigour of Section 14-A. The explanation made it abundantly clear that all companies covered by the Companies Act would be companies within the meaning of the explanation. On the contrary, those companies falling under the explanation to Section 14-A would not be companies under the Companies Act. To put it in other words, a company falling under the explanation to Section 14A of the Provident Fund Act which did not come within the purview of the Companies Act, the liability of the persons would be governed only by Section 14-A (1) and (2) of the Provident Fund Act. They would not be entitled to any relief under Section 633. Bench concluded that the benefit available under social welfare legislation, the Employees Provident Fund Act, cannot be defeated in this manner. Further, it remarked that if the interpretation suggested by the appellants were accepted, it would cover the existing laws and all legislations to be enacted in future.

With the above observations and conclusions, Bench found no merit in these appeals and dismissed them.

EXEMPTION

Jiyajeerao Cotton Mills Ltd. vs Dev Kumar Holani and Others

1998 AIR (SC) 2480

Jiyajeerao Cotton Mills Ltd., an establishment covered under the EPF Act, 1952, established its own Provident Fund trust and formulated its guidelines and rules in 1952. Later, it applied for the grant of exemption under Section 17(1)(a) of the Act by the appropriate Government, and on fulfilment of the statutory requirement, the exemption was granted from November 1, 1952, through a notification dated January 1, 1963. On January 29, 1983, the Central Government issued a letter to the relevant authorities, presenting revised conditions for granting exemptions as per Section 17(1). A notable amendment among these updates was that any amendment to the statutory Employees Provident Funds Scheme offering greater benefits to the employees would automatically apply to the members of the exempted Provident Funds as well.

In the meantime, some of the employees [Respondents 1 to 9] who were members of the Provident Fund were discharged from service and received their Provident Fund benefits. They claimed the difference in interest rates between what the Appellant's Board of Trustees declared and the rate announced by the Central Government for certain years. Subsequently, the case was examined by the Regional Provident Fund Commissioner. Regarding the updated exemption conditions, the Commissioner decided that these revised conditions, as notified by the Government of India, would not be enforceable for a specific exempted establishment until and unless officially published in the Official Gazette by the appropriate Government.He concluded that since the Appellant was considered an exempted establishment, each employee's account should be credited with interest at the rate determined by the Board of Trustees. In other words, since the Appropriate Government had not amended the exemption scheme of the Appellant, the employees were not eligible for the increased interest rate.

The employees contested this decision by filing a writ petition under Article 227 of the Constitution of India with the High Court of Madhya Pradesh. The High Court reasoned that once the Central Government announced a higher interest rate, the provision in the exempted scheme allowing the Appellant to pay a lower interest rate rendered it less advantageous for the employees. Furthermore, considering the revised conditions for granting exemption, the High Court deemed it the Appellant's obligation to adhere to the condition regarding the payment of interest at an increased rate upon notification by the Central Government. Consequently, the High Court granted the petition, instructing the Appellant to compensate the employees for the stated difference.

In the Supreme Court, the Appellant argued that the modified terms and conditions for granting exemption, proposed by the Central Government, did not automatically apply to the Appellant. He emphasised that these changes could only become effective through an amendment initiated by the State Government in the Appellant's exemption scheme, followed by an official notification in the gazette.

The Supreme Court observed that the Central Government did not enact any statutory amendments or provide official directives. Instead, they requested all State Governments and Union Territory Administrations to grant exemption under Section 17(1)(a) while adhering to the specified conditions outlined in the model notification's schedule. The revised terms and conditions were not automatically enforceable and necessitated the appropriate Government's incorporation into the exemption notification under Section 17(1)(a) for them to take effect. The Regional Provident Fund Commissioner rightly emphasised that condition no.4 would not apply to exempted establishments unless the appropriate Government issued a notification amending the exempted scheme and published it in the Official Gazette.

The Supreme Court concluded that the High Court had misinterpreted the legal position and unfairly criticised the Regional Provident Fund Commissioner, ultimately allowing the appeal and reinstating the Commissioner's decision while overturning the High Court's order.

Regional Provident Fund Commissioner vs Hooghly Mills

(2012) 2 SCC 489

In this matter the Supreme Court considered whether the establishments granted exemption under the Act could would be liable for damages under Section 14-B for delay in remitting the Provident Fund contributions. The employer of M/s Hooghly Mills Company Ltd. raised this question before the High Court. Both the Single Bench and the Division Bench of the High Court ruled in favour of the employer, stating that as an exempted establishment is not bound by the provisions of Section 14-B of the Act.

Pertinently, Section 17(1A) of the Act stipulates that where an exemption has been granted to an establishment, the provisions of Sections 6, 7-A, 8 and 14-B shall, so far as may be, apply to the employer of the exempted establishment in addition to such other conditions specified in the exemption notification, and where such employer contravenes or makes default with any of the said provision or condition, he shall be punishable under Section 14 as if the said establishment had not been exempted.

The High Court determined that the phrase "so far as may be", as used in Section 17(1A)(a) of the Act, aims to restrict the application of provisions in Sections 6, 7-A, 8, and 14-B to the exempted establishments. Additionally, it was held by the High Court that the damages recoverable under Section 14-B of the Act are not intended to compensate individual affected employees. In cases of delayed payment, compensation for the loss of individual affected employees is provided through interest payment under Section 7-Q of the Act. Given that, the phrase "so far as may be" in Section 17(1A)(a) of the Act does not necessitate a broad interpretation.

On the part of the EPFO, it was argued that both the writ court and the appellate Bench of the High Court misunderstood the application of Section 14-B to an 'exempted establishment' due to a misinterpretation of the phrase "so far as may be." The argument was that in interpreting provisions of a social welfare legislation such as the Act, the High Court did not justify deviating from established principles of liberal interpretation.

In the present case, the Supreme Court adopted a purposive approach that aligns with the Act's objectives and purposes. Upon scrutinising the pertinent clauses, the Supreme Court noted that sub-clause (a) of Section 17(1A) consists of two parts. The first part specifies that when an exemption is bestowed upon an establishment, the provisions of Sections 6, 7-A, 8, and 14-B shall, so far as may be, apply to the employer of the exempted establishment, alongside any other conditions mentioned in the exemption notification.

The second part is more specific, explicitly stating that if an employer contravenes and defaults in complying with any of the mentioned conditions, including Section 14-B, they shall be punishable under Section 14 as if the establishment had not been exempted under clause (a). This deeming provision indicates the application of Section 14-B of the Act to the 'employer' of an 'exempted establishment.' Hence, the Supreme Court affirmed that the second part of clause (a) of Section 17(1A), introduced by the word 'and,' has a wide-ranging and comprehensive scope.

The Supreme Court further emphasised the fact that the High Court drew upon the interpretation of "so far as may be" from the case of *Dr Pratap Singh and another vs Director of Enforcement, Foreign Exchange Regulation Act and others* [AIR 1985 SC 989] which relates to fiscal regulations and penal provisions. In contrast, the EPF Act is primarily a social welfare legislation. Therefore, the parameters of interpretation cannot be the same.

In this case, the Supreme Court emphasised that the High Court overlooked the essential principle of interpreting social welfare legislation. It is firmly stated that interpreting labour, social or economic legislation without considering the principles of social justice is unacceptable.

The Supreme Court firmly established that in cases where an employer of an exempted establishment defaults in making contributions to the Provident Fund, Section 14-B of the Act shall indeed be applicable.

CONSTITUTIONAL VALIDITY

THE MAFATLAL GROUP STAFF ASSOCIATION VS REGIONAL PROVIDENT FUND COMMISSIONER

(1994) AIR (SC) 2271

In this appeal, the validity of the Employees' Family Pension Scheme was called into question. The provisions and manner of implementation were challenged on two counts: one is that the scheme is said to be discriminatory between the members existing on the date of effect of the scheme and the members joining the scheme afterwards, while the second is that the amount collected from the employees is far more than the benefit provided to them.

The Provident Fund is an effective old age and survivorship benefit, but when an employee dies prematurely, the accumulations in the Provident Fund were not found to be sufficient to render the needs and long-term protection to the family. This intention of the Parliament led to the introduction the Employees' Family Pension Scheme.

1The scheme was made effective from March 1, 1971. The Scheme provided for family pension, life assurance and retirement-cum-withdrawal benefits. The scheme provided that every person who becomes a member of the Employees' Provident Fund Scheme on or after March 1, 1971, shall automatically become a member of the Family Pension Fund Scheme. At the same time, the existing members were offered an option to join the Family Pension Scheme or stay out.

The appellant filed a writ petition before the Bombay High Court that the Scheme violates the equal protection clause in Article 14 of the Constitution of India. The Single Judge allowed the petition and found it discriminatory because it provides an option to the employees who were members of the

Provident Fund as of the said date, while no such option is offered to the employees who become members of the Provident Fund after the date. The learned Judge also made some observations on the meagreness of return when compared to the contribution by a member. On appeal, however, the Division Bench disagreed with the learned Judge on both points.

The Court heard both the parties. The Court rejected the complaint of discrimination. The Court observed two sets of employees: one who comes after the introduction and becomes a member, while those already members of the Provident Fund are free to join or stay out. However, no one is deprived of the benefit of the new scheme. The option means that if an employee who is already a member of the Provident Fund thinks that, having regard to the years of service put in or left and/or for any other reasons, it is not beneficial for him to join the new scheme, he can stay out.

The Court held that the scheme is in the nature of an Insurance Scheme, and no one may get less than what he has contributed. The Court categorically stated that *'The government contributes because the scheme serves a social purpose. No one can say that each and every employee must get back not only what he contributes but also the contributions of the employer and the government put together. This is just not possible. Who is to care for the widows or minor children of the deceased employees, and wherefrom that money is to come if each employee insists upon receiving the total of his, the employer's and the government's contribution? We are, therefore, of the opinion that if one keeps in mind the aforesaid basic features of the scheme, all objections to its desirability and validity appear groundless.'*

The Court dismissed the appeal. The judgment set aside the contention of the appellant to be paid with the employer's contribution as well as government contribution and interest thereon. The decision also affirmed the utilisation of employer/government contributions to pay family pension/life assurance benefits to the widows and minor sons or unmarried daughters of unfortunate members who die prematurely. At the same time, the Court held, it cannot be that while the Fund accumulates, the employees and their families decay.

OTIS ELEVATOR EMPLOYEE UNION AND OTHERS VS UNION OF INDIA

2004 SCC (L & S) 988

On 16.11.1995, a comprehensive pension scheme was introduced, replacing the 1971 scheme. This change required amendments to the EPF Act, 1952, particularly Sections 6A and 6B, which were significantly modified by Act 25 of 1996 with effect from 16.11.1995.

The legality of the 1996 amendment and the 1995 pension scheme was challenged in various High Courts, with arguments of unreasonableness, arbitrariness, and discrimination. However, the High Courts uniformly found the 000scheme reasonable and rejected these contentions. They highlighted that the Act provided clear objectives and policy guidelines for the pension scheme in Section 6A and the core framework in Schedule III. The obligation to present the scheme to Parliament further ensured proper oversight. Regarding concerns about the scheme being unprofitable for employees, the High Courts emphasized that employees didn't have vested rights over employer contributions, as previously established in Mafatlal Group Staff Association's case.

Appeals against those said orders passed by the High Courts were filed in the Supreme Court. Several writ petitions filed before the High Courts were also sought to be transferred to the Supreme Court by filing the Transfer Petitions. Some of the employers also filed petitions or appeals before SC as their applications for grant of exemption from the operation of the pension scheme were rejected by the respective Regional Provident Fund Commissioners or by the concerned Governments.

The appellant argued that the Supreme Court should investigate and determine the accuracy of the opposing contentions and details presented by the parties regarding whether there was a broad correspondence between what employees contributed and what they would receive in return. They relied on the Supreme Court's earlier decision in the Mafatlal Group Staff Association's case, which dealt with the Employees' Family Pension Scheme of 1971 under Section 6A of the Act.

The Supreme Court emphasized that while it was not feasible to investigate the accuracy of the opposing statements and details provided by the parties, there should be a general alignment between what employees contributed and what they and their families ultimately received. The Court considered this principle to be a statutory duty of the government. Since the actuarial assessments were to be conducted every three years, as stipulated by the statutory scheme, the Court expected these observations to guide the authorities in ensuring a balance between contributions and benefits.

The Supreme Court said that the Act is a social welfare legislation designed to establish provident funds, pension funds, and deposit-linked insurance funds for employees in various establishments. Unless the legislation is arbitrary, the Court will not interfere in implementing such policies, except in cases of discrimination or arbitrariness. Given that the scheme is aimed at employee welfare, it cannot be considered violative of the Constitution. Some arguments were made about tables in the scheme, suggesting that similar amounts invested in term/fixed deposits would yield higher returns. However, since the scheme aligned with what was previously approved by the Supreme Court in the Mafatlal case, it didn't require detailed examination. The key consideration was whether there was a substantial disparity between employee contributions and the benefits to their families, amounting to deprivation. The scheme diverts funds from the Provident Fund Scheme, which consists of equal contributions from employees and employers, with some contributions from the government, as it serves a social purpose. It's unnecessary for every employee to receive back exactly what they contributed, given the scheme's provisions for situations such as employees passing away before retirement, before reaching the age of 58, or when they are not employed. Therefore, the SC did not find it valid to claim that the scheme imposed exorbitant contributions with negligible returns. Any grievances regarding discrimination or arbitrariness were found to have been addressed by the government, and SC found that there was no need for further consideration of these issues. Thus, the complaint of discrimination or arbitrariness in violation of Article 14 of the Constitution was not upheld, and the Court did not find it necessary to interfere with the government's scheme.

There were other issues surrounding the opinion survey report and actuarial assessment by the Government before chalking out the Scheme. The Supreme Court went through the report and discussed its salient points. The opinion survey report, contrary to appellants' claims, supported the government's push for a majority of employees to favour a pension. The report emphasized members' desire for a protective umbrella to safeguard their savings from inflation. It highlighted the need for a mandatory pension scheme due to changing family dynamics and increased life expectancy. It also underscored the importance of intergenerational wealth transfer. Concerns about actuarial liabilities related to the ceased Employees' Family Pension Scheme, 1971, were also addressed.

Additionally, questions about the Government's contribution to the pension scheme, investments in PSU bonds and state government securities, and assumptions regarding interest rates were also clarified. The Government's contribution was treated as an investment and earned interest, dispelling the notion of it being merely notional. Investments in PSU bonds and state government securities were to be made in accordance with statutory provisions, with no substantive basis for concerns. The scheme's success and solvency were demonstrated through successive valuation reports and annual raises in pension payments.

Therefore, the SC upheld the validity of the schemes, with directives for re-examining exemption requests in cases involving establishments with their own pension schemes, ensuring that benefits provided are not less favourable to employees than those under the statutory scheme. Overall, the court upheld the schemes' validity and emphasized compliance with the law in exemption cases.

Mohammadali and Others Vs Union of India and Another

1964 AIR 980 SC, 1963 SCR Supl. (1) 993

The constitutional validity of section 1(3)(b) of the EPF Act and a notification issued thereunder by the Central Government applying the Act on hotels and restaurants was the cornerstone of contestation before a five-judge Constitution bench in this case.

The petitioners were partners in a firm that ran a restaurant by the name and style of 'George Restaurant and Stores' in Mumbai. They were aggrieved by the notification issued by the Central Government under section 1(3)(b) of the Act bringing into its ambit establishments functioning as hotels and restaurants. The challenge was set up through a writ petition under Article 32 of the Constitution directly before the Supreme Court.

A Constitution bench of five judges heard the matter. The petitioners contended that section 1(3) provides untrammelled power to the Central Government to apply the Act on various classes of establishments and thereby suffers from the vice of excessive delegation. It was contended that such delegation was ultra vires of the legislative competence of the Parliament and would, therefore, render the relevant provision and the notification issued thereunder unconstitutional. It was also argued that the Act applies to wage earners, not persons earning salaries.

The Court went through the different provisions of the Act and held that its purpose was to provide the institution of provident funds for the working class, which is finally aimed at achieving the constitutional goal of social justice. The court observed no material difference between salary and wages earning employees insofar as the right to Provident fund was concerned. The power delegated to the Central Government to apply the Act on various classes of establishments and industries was held to be reasonable and within the parameters of delegated legislation.

Through a unanimous judgement, the Constitution Bench dismissed the writ petition and upheld the provision under contestation and the notification issued thereunder.

J.P. Tobacco Products Vs Union of India and Others

(1996) I LLJ 822 SC

On November 1, 1990, a notification was issued by the Central Government amending Paragraph 26(2) of the Employees' Provident Funds Scheme, 1952. This amendment required all employees, except those expressly excluded, to become members of the Provident Fund from the moment they joined their respective establishments. The legal validity of this amended Paragraph 26(2) was challenged in the case of Khemchand Motilal Tobacco Product Ltd. vs Union of India [1995 (II) CLR 360] before the Madhya Pradesh High Court. The challenge to the notification was primarily based on four grounds: 1. The contention is that the amendment to Paragraph 26(2) violated Section 7(2) of the EPF Act. 2. The argument that the mandatory contributions amounted to a denial of minimum wages. 3. Claims that the amendment was unworkable and impracticable. 4. Allegations that the amendment conflicted with the EPF Act and Articles 14 and 19(1)(g) of the Indian Constitution.

The Madhya Pradesh High Court ruled in favour of the validity of the amendment, and the Supreme Court subsequently upheld this decision in the case of J.P. Tobacco Products vs Union of India and others. The Supreme Court determined that the amendment to Paragraph 26(2) of the Scheme was valid, and the requirement of compulsory contributions to the provident fund did not constitute a denial of minimum wages. Additionally, the Court found that the amendment was practical and workable and did not violate the EPF Act or Articles 14 and 19(1)(g) of the Indian Constitution.

Consequently, there is no differentiation between temporary or permanent employees or contract and casual employees engaged by contractors under the Act. Furthermore, there are no eligibility conditions or qualifying services for the enrollment of employees. All employees or workers falling within the definition of 'employee' under Section 2(f) of the EPF Act are obligated to become members, and the provisions of the EPF Act and Schemes apply to such employees.

EMPLOYEES' PROVIDENT FUND ORGANISATION Vs SUNIL KUMAR B

Citation: AIR 2022 SC 5634

The case is indisputably one of the fiercely contested litigations in the history of the EPF Act. At the heart of the contestation was the constitutional validity of the amendments made to the Employees' Pension Scheme, 1995 (the EPS), which the Kerala High Court struck down. EPFO challenged the same in the Supreme Court.

The Employees' Pension Scheme was amended in 2014 with the following modifications: (a) The pensionable salary was enhanced from Rs. 6500 to Rs.15,000 per month. (b)The computation of pensionable salary was amended from the average of the last 12 months' pay before the exit to that of the last 60 months. (c) Membership of the pension scheme was prospectively restricted to persons earning pay less than Rs.15,000 per month at the time of joining. (d) The option to contribute to the pension fund on salaries above the wage ceiling was deleted. (e) Employees contributing to the pension fund on wages above the wage ceiling were, however, allowed to continue making remittances on such higher salaries subject to payment of an additional 1.16% contribution out of employees' share.

The amendments were challenged in the Kerala High Court, which struck down the same with the following observations: (i) The High Court held that the amendments made an unreasonable classification between employees earning above and below the wage ceiling and, therefore, were unconstitutional. (ii) It was held that the wage ceiling of Rs.15,000 per month was insufficient, and the enhancement was therefore set aside. (iii) It was held that seeking a 1.16% additional contribution from the employees' share of the Provident fund was ultra vires of the principal enactment and, thus, invalid. (iv) The modification in the computational basis of pensionable salary was also held to be arbitrary as it reduced the quantum of pension. (v) The plea of EPFO regarding financial deficit in the Scheme was rejected by citing a newspaper report which stated that the scheme has an unclaimed sum of Rs. 22,000 crores.

The amendments made to the pension scheme in 2014 were struck down in toto, including those parts that were not challenged. The Union of India and the EPFO both challenged the impugned judgement of the Kerala High Court. The principal contestation before the Supreme Court was the constitutional validity of the amendments made in 2014 to the Pension Scheme. An additional point for consideration regarding the correctness of the opinion expressed in RC Gupta versus Union of India [(2018) 4 SCC 809] was also referred to the three-judge bench by a bench of two judges previously hearing the matter.

The Supreme Court upheld the 2014 amendments to the Pension Scheme. While doing so, it also read down some parts of the amendments and made a direction under Article 142 of the Constitution. The details of the directions made are as follows:

i. The impugned amendments to the Pension Scheme were upheld.

ii. The view taken in RC Gupta vs Union of India [(2018) 4 SCC 809] as to the absence of any cut-off date for the exercise of options under paragraph 11(3) was confirmed by the Supreme Court. A time of eight weeks has been granted to the fund administrators to issue instructions for the implementation of the said judgment.

iii. It was held that employees who had retired prior to coming into force of the amendments on 01.09.2014 without exercising the stated option had already exited the scheme and cannot exercise the option under paragraph 11(3).

iv. It was held that the requirement for option members (contributing above the wage ceiling) to contribute 1.16% of additional contribution from employees' share was ultra vires of the parent enactment. That part of judgement has, however, been kept suspended for six months in order to allow the legislature to make provisions in the Act to remove the legal defect.

v. Direction has been made in exercise of jurisdiction available under Article 142 to the effect that members existing on the date of coming into force of the amendments (01.09.2014) shall be allowed to exercise the option contemplated under paragraphs 11(3) and 11(4) within the next four months.

vi. It was held that the Central Government has the power to amend the Scheme, either prospectively or retrospectively, in order to maintain the financial sustainability of the Pension Fund.

INSOLVENCY

JET AIRWAYS MAINTENANCE ENGINEERS VS ASISH CHAWCHHARIA(RP)

[2022, 861, NCLAT New Delhi and Civil Appeal No.407 of 2023]

The Corporate Insolvency Resolution Process (CIRP) under Insolvency and Bankruptcy Code, 2016 has integrated resolution into the liquidation process. The legal provision of provident fund dues being out of the liquidation estate in terms of Section 36(4)(a)(iii) of the I & B Code, 2016 has attained finality in the case of *Sunil Kumar Jain vs Sundaresh Bhatt [Civil Appeal No. 5910 of 2019].* However, in the case of a successful resolution, the status of the provident fund dues was debatable, especially in the light of various judgments of the Supreme Court upholding that the decisions of the Committee of Creditors (CoC) based on the commercial wisdom are beyond judicial review. The order of NCLAT, New Delhi, in the case of *Tourism Finance Corporation of India Ltd. vs Rainbow Papers Ltd (2019, 463 NCLAT),* held that the Provident fund dues must be paid in full by the successful resolution applicant. Supreme Court upheld the order. However, the matter cannot be said to have attained finality because the legal provisions of exemption of PF dues from the Liquidation Estate in terms of Section 36(4)(a)(iii) of the I & B Codewere directly applied to the resolution process without establishing any correlation between the two different processes. The present case assumes importance in this background.

The petitioners, on behalf of the workers, argued that the PF dues are outside liquidation estate and that the workers and employees could not be placed in a worse situation in the event of resolution of the Corporate Debtor than they would have been in the event of liquidation under Section 30(2)(b) of the I & B Code. The respondents, on behalf of the CoC, argued that the provisions of section 36(4) will come into play only in case of liquidation and that the commercial wisdom of the CoC is not amenable to judicial review. The respondents also contended that the dues towards the Provident Fund are excluded from liquidation estate, and in case no such fund is created, section 36(4) does not apply.

The NCLAT observed that the commercial wisdom of the CoC is not to be interfered with in the exercise of jurisdiction of judicial review as long as the Resolution Plan does not violate section 30(2) of IBC. The court referred to section 18 of the I & B Code, which states the duties of the Resolution Professional (RP). As per the explanation to the section, the RP was supposed to take all assets of the corporate debtor into custody except those who are owned by a third party. The Provident fund dues, being in the nature of third-party assets, are covered by this explanation. The court, therefore, held that non-payment of the statutory dues of Provident Fund is a violation of section 30(2)(e) of IBC; hence, such a Resolution Plan does not fulfil the mandatory criteria laid down. The Court further held that non-recognition of the first charge of EPFO under section 11(2) of the EPF Act would also be construed as a violation of section 30(2)(e) of the I & B Code, 2016.

The order of NCLAT, New Delhi, has been upheld by the Supreme Court, thus becoming a judicial precedent in the case of resolution where the law was silent.

MISCELLANEOUS

AMIT VASHISTHA VS SURESH AND ANOTHER

2017 AIR (SC) 4469

The question for consideration before the Supreme Court in this criminal appeal was whether the authority exercising jurisdiction under section 7-A of the EPF Act would qualify as a Court under Section 195 (1) of the Code of Criminal Procedure (Cr. P.C) for maintaining a complaint under section 228 I.P.C for intentional insult or interruption caused to him in exercise of such jurisdiction.

The appellant in this case was the Assistant Provident Fund Commissioner adjudicating proceedings under Section 7-A of the EPF Act with regard to the provident fund claims of the respondent. The appellant filed a complaint before the Judicial Magistrate First Class under Section 228 of I.P.C that the respondent had obstructed and interfered with the proceedings. The Magistrate convicted the respondent till the rising of the Court and imposed a fine of Rs.500/- with default stipulation. The Sessions Judge maintained the conviction in the appeal; however, in the revision application filed by the respondent, the High Court acquitted the respondent of the charge under Section 228 of the IPC on the premise that the adjudication proceedings under Section 7-A of the Act not being before a court, the complaint itself was not maintainable.

The Appellant contended that the High Court erred in not appreciating that the proceedings under Section 7A were judicial proceedings and misdirected itself in concluding that the office of the appellant was not a court and, therefore, the complaint itself was not maintainable under Section 195(1)(b)(i) of the Cr.P.C.

The respondent argued that the proceedings under Section 7-A not being before a court, the High Court rightly held that no complaint could have been filed under Section 195(1)(b)(i) of the Cr. P.C., which was applicable only to proceedings before a court. It was further submitted that in any event, the complaint could have been filed, if at all, before the appellate tribunal under Section 7-J of the Act and not before the magistrate directly.

It was held that the proceedings under section 7-A of the Act were judicial proceedings, and the authority exercising jurisdiction under that section would qualify as a court for the purpose of section 195(1) of the Cr PC. The appeal was allowed, and the conviction of the respondent was upheld.

EPFO Vs SUDARSHAN KUMAR

Civil appeal 6452 of 2012

The question for consideration in this matter before a three judges bench of the Hon'ble Supreme Court was whether the applicant department had the jurisdiction to issue directions to an authority exercising adjudicatory jurisdiction under section 7 A in respect of discharge of such jurisdiction.

The respondent was an Assistant Provident fund Commissioner who, in exercise of powers available under section 7A of the Act, issued an arrest warrant against an employer. The appellant organisation issued general instructions that the power of exercise of issue of warrants must be utilised only with prior approval of the administratively superior officers. The matter was contested in the Bombay High Court which set aside the directions with the observations that such directions interfered in the exercise of adjudicatory jurisdiction of the officer concerned and was not permissible in law.

Upon further challenge before the Supreme Court the observations made by the Bombay High Court were upheld. The Hon'ble Supreme Court observed:

"Therefore, it is for the authorities in whom the power is vested to exercise the power. The exercise of power cannot be interfered with by any administrative authority. If such a power is allowed to be exercised by an administrative authority which has the effect of controlling the exercise of power of quasi-judicial or judicial body that would directly impinge on the administration of justice and the rule of law. It is not possible for this Court to accept such a contention that the judicial power can be fettered by administrative instructions. The rule of law would contemplate that the judicial authority exercises its powers in terms of the act and the rules framed thereunder. If the Authority is a creature of a statute it is bound by the provisions of that statute. A body even if be a part of the machinery of the same act cannot be permitted to issue direction controlling the discretion of the authority exercising quasi-judicial powers. In our opinion, therefore, para 3 of the impugned Circular is arbitrary and violative of the powers conferred on the authority under Section 7A of the Act and consequently will have to be set aside." It is submitted by the learned counsel for the appellant that the circular had been issued, as non-bailable warrant of arrest was issued by certain authorities in indiscriminate manner. We appreciate the concern of the appellant. However, when a statute confers a power on an authority, it is to be exercised by it. There cannot be introduction of a concept of prior permission from any superior authority. On that score, we do not find any fault with the analysis made by the High Court. However, we would like to direct that the authorities, who are exercising the power under Section 7A of the Act, before issuing any warrant of arrest, should circumspect and not issue some mechanical direction in a routine manner i.e. it has to be remembered that issuance of warrant of arrest should be a last resort under the scheme of the Act.

Consequently, the appeal filed by the organisation was dismissed and the ob of the Bombay High Court were upheld.

MARATHWADA GRAMIN BANK KARAMCHARI SANGHATANA AND ANOTHER VS MANAGEMENT OF MARATHWADA GRAMIN BANK AND OTHERS

2011 (2) SCC (L&S) 562

In this appeal, the issue before the Supreme Court was whether an employer could be compelled to pay the Provident Fund in excess of its statutory liability under the EPF Act, 1952 and Employee Provident Fund Scheme, 1952 or the scope of contribution to the Provident Fund Scheme by the employer.

The appellants are Marathwada Gramin Bank Karamchari Sanghatana and Marathwada Regional Rural Bank Employees Union, and the Respondents are the Management of Marathwada Gramin Bank and the Regional Provident Fund Commissioner.

Marathwada Gramin Bank followed the provisions of the Employees Provident Fund Scheme, 1952 (Statutory Scheme) between September 1, 1979 and August 31, 1981. After that, the bank formed its own trust and framed its own Provident Fund Scheme under which its employees received excess Provident Fund (PF) compared to what they received under the Statutory Scheme. The Regional Provident Fund Commissioner had granted exemption from the Statutory Scheme from November 1, 1981, and permitted the bank to pay as per its own Scheme. However, this exemption was withdrawn and cancelled by the RPFC on October 14, 1991, with directions to implement provisions of the Statutory Scheme. The bank complied but continued payment of higher Provident Fund contributions until 31.08.1993. But owing to huge accumulated losses, the Bank issued a “notice of change” under Section 9-A of the Industrial

Disputes Act, 1947 and stopped the payment of Provident Fund in excess of its statutory liability with effect from November 1, 1998, and continued to pay Provident Fund according to Statutory Scheme. However, RPFC issued directions to continue extending the same Provident Fund benefit as was granted before November 1, 1998.

After that, this matter was referred to the Central Government Industrial Tribunal. The Tribunal relied on Section 12 of the Act, 1952. It held that employer cannot reduce the wages of employees to whom the Scheme applies or the total quantum of benefits in the nature of old age pension gratuity (provident fund) or life insurance to which the employee is entitled under the terms of his employment. The tribunal also directed that the workers continue to benefit from the prevailing practice of contribution of the Employees Provident Fund without any ceiling. Being aggrieved, Respondent Bank filed a writ petition before the High Court on the grounds that the impugned tribunal award, as well as the communication issued by the RPFC, is contrary to law as the same is based on the assumption that Section12 of the 1952 Act creates a bar for imposing the ceiling in accordance with the Provident Fund Act.

To support this, Respondent Bank relied on the judgement of the Constitution Bench of this Court in *Committee for Protection of Rights of ONGC Employees and Others vs. Oil and Natural Gas Commission and Another* (1990) 2 *SCC* 472 and the judgment of the High Court of Kerala in *Vijayan v. Secretary to Government* 2006 (3) KLT 291. The Appellants, for the first time, submitted that Section 17(3)(b) of the 1952 Act was subject to certain conditions. However, the Single Judge of the High Court did not allow this contention because it was not raised before and can't be raised now in a writ petition. They also contended that the banks are required to obtain leave of the Central government, which they did not. They cited the judgement in *Madura*

Coats Employees Union V. Regional Provident Fund Commissioner and Others [(1999) ILLJ 928] to support this. The High Court held that Section 17(3)(b) of the 1952 Act was not applicable in the facts of this because it applies only when the exemption is granted and is in force. As a result, the appellant moved to the Supreme Court under Article 136 of the Constitution of India.

Further, on analysis of Section 12 of the 1952 Act, the High Court concluded that it would operate as a bar in case the same was the term of employment expressed or implied. In contrast, in the instant case, it was the express term of employment that the contribution of the bank shall be in accordance with the provisions of the 1952 Act.

The learned Single Judge thus observed that the bar of Section 12 would not operate as otherwise held by the Tribunal in the impugned award. The impugned order of the tribunal was set aside. The appellants moved before the Division Bench with the contention that the banks are required to obtain leave of the Central government, which they did not. They cited the judgement in *Madura Coats Employees Union vs Regional Provident Fund Commissioner and Others* [(1999) ILLJ 928] to support this. The Division Bench distinguished Madura Coats (supra) and, approved the view of the learned Single Judge and dismissed the appeals.

The appellants approached the Supreme Court with the contention that this case involved substantial questions of law regarding the interpretation of the provisions of Section 12 of the 1952 Act and also argued that the contribution to provident fund is a component of wages and when admittedly the respondent bank has paid provident fund at higher rate without any ceiling for a long period of time and continued to do so even after withdrawal of the exemption whether it is open to the respondent bank to reduce its contribution towards provident fund. The appellants submitted that given the facts of this case, Section 12 of the 1952 Act is attracted. The appellants reiterated before the Supreme Court the identical submissions advanced before the Division Bench of the High Court.

The Supreme Court held that the concerned bank was under obligation to pay the Provident Fund to its employees according to the provisions of the Statutory Scheme and not in excess of its statutory liability just because the bank had formed its own trust and Scheme and started paying Provident Fund in excess for some time in the past. The Supreme Court held that appellants are entitled to Provident Fund according to the statutory liability of the bank.

The Regional Provident Fund Commissioner Vs Shiv Kumar Joshi

(2000) AIR (SC) 331

In this case, the Supreme Court decided a substantial question of law: whether the Consumer Protection Act, 1986 provisions can be invoked against the Provident Fund Commissioner by a member of the Employees Provident Fund Scheme. Whether such a member is a 'consumer' and the duties performed by the Provident Fund Commissioner is a 'service' within the meaning of the Consumer Protection Act, 1986.

The respondent was a member of the Provident Fund Scheme and applied for payment of his Provident Fund benefits on 15.07.1992 to the Regional Provident Fund Commissioner. The application was not found complete as required by Para 72(5)(d) of the Provident Funds Scheme. The application was sent to the respondent's employer for verification in terms of the said Para. The Area Inspector stated to visit the factory on 19.08.1992 personally and obtained the verification application. The claim was settled on 24.08.1992. The respondent filed a complaint before the District Consumer Disputes Redressal Forum, Faridabad and claimed damages and costs for the alleged delay in payment of his provident fund. The Forum directed to pay interest @18% on delayed payment and costs of ₹ 1000. Not satisfied with the order, the appellant filed an appeal before the State Consumer Disputes Redressal Commission and then with the National Consumer Disputes Redressal Commission; however, the appeals were dismissed.

The appellant contended that the said scheme could not be held to be a 'service' within the meaning of Section 2(1)(o) and the respondent as a 'consumer' within the meaning of Section 2(1)(d) of the Act. It was urged that the Provident Fund Commissioner was the custodian of the funds passed to him, and the contribution to the Scheme was not for consideration; the Act was not applicable.

The Appellant further submitted that as no part of the administrative charges is payable by the employee, he (employee) cannot be held to be a 'consumer' within the meaning of Section 2(1)(d) of the Consumer Protection Act. Nobody appeared on behalf of the respondent. The Court heard the arguments submitted by the appellant.

The Court carefully considered the provisions provided under the Act and the scheme and found that the administrative charges are paid in lieu of the membership of the employee and for the services rendered under the scheme. No service is rendered to the employer under the scheme framed for the employees' benefit. The Court held that '*the Regional Provident Fund Commissioner under the Act and the scheme discharges statutory functions for running the scheme and not, in any way, been delegated the sovereign powers of the State so as to hold it as a Central Government, being not the authority rendering the 'services' under the Act. The Commissioner is a separate and distinct entity, it cannot legally claim that the facilities provided by the 'scheme' were not 'service' or that the benefits under the scheme being provided were free of charge.*' The Court held that the scheme is a 'service' within the meaning of Section 2(1)(o) of the Consumer Protection Act.

The Court categorically held that if the contention of the appellant that as no part of the administrative charge is deducted from the actual wages of the employee, he cannot be deemed to be hiring the services of the scheme, the consequence of such an interpretation shall frustrate the object of the Act and the scheme. The Court observed that no service is rendered to the employer under the scheme framed for the employee's benefit under Sections 5, 6 and 7 of the Consumer Protection Act. The Court rejected the appellant's contention that even though the employee is a member of the scheme, the employer would only be deemed to be a 'consumer' for having made payments of the administrative charges.

The Court relied on the judgment in *M/s Spring Meadows Hospital and another vs. Harjol Ahluwalia* [JT1998 (2) SC 620] wherein it was held that '*consumer means a person who hires or avails of any services and includes any beneficiary of such service other than the person who hires or avails the services and includes any beneficiary of such service other than the person who hires or avails the service.*' The Court further explained with an illustration that when a young child is taken to a hospital by his parents and the child is treated by the doctor, the parents, as well as the young child, would also become a consumer under the inclusive definition of being a beneficiary of such services.

The Court ironed out several notions from the minds of the members as well as the authorities. It paved the way for more efficiency and transparency in the service delivery mechanism of the Organisation.

EMPLOYEES PROVIDENT FUND ORGANIZATION, INDIA

MINISTRY OF LABOUR & EMPLOYMENT, GOVERNMENT OF INDIA