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NOOR NIWAS NURSERY PUBLIC SCHOOL

v.

REGIONAL PROVIDENT FUND COMMISSIONNER AND ORS.

DECEMBER 8, 2000

B

[S. RAJENDRA BABU AND S.N. VARIAVA, JJ.]

C

*Employees' Provident Funds and Miscellaneous Provisions Act, 1952—Sections 1(3)(b), 2-A, 17—Appellant, a Nursery School situated adjacent to a Higher Secondary School run by the same Society sought to be covered by the Employees' Provident Funds and Miscellaneous Provisions Act—Held Clerk of the Higher Secondary School found to have furnished particulars in regard to the appellant School also to the Inspector of the respondent department—The two schools being located in one and the same address and thus having geographical proximity—Held, all these facts clearly point out that the two units constitute one single establishment and, therefore, is covered by the Act—The fact that the Higher Secondary School has been excluded from the purview of the Employees' Provident Funds and Miscellaneous Provisions Act cannot be of any help to the appellant—When the entire establishment is covered by the Act and only part of the establishment is excluded, the appellant cannot claim non-applicability of the Act on the ground that it falls short of the minimum number of employees.*

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**The appellant, a Nursery School situated adjacent to a Higher Secondary School run by the same Society was sought to be covered by the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 considering the two units to constitute one and the same establishment. The appellant was aggrieved as according to it the two were different institutions managed by two different Managing Committees. The Provident Fund Commissioner held that the two institutions constituted one and the same establishment and, therefore, was covered by the Act. The order of the Provident Fund Commissioner was challenged unsuccessfully before the High Court. Hence the present appeal.**

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**On behalf of the appellant, it was contended that the appellant had four employees and it being a separate establishment was not covered by the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act; that the Higher Secondary School had been excluded from the purview**

of the Act in view of the fact that the provident fund in respect of all the employees was subscribed under another scheme; that if the two units were put together as a single establishment, the Act would be applicable and otherwise not, inasmuch as it fell short of the number of minimum of employees for the applicability of the Act under Section 1(3)(b) of the Act. A

On behalf of the respondent, it was contended that when the Provident Fund Inspector visited the Higher Secondary School, the Head Clerk therein gave particulars not only in regard to the said school but also in regard to the appellants-school; hence the nexus between the two schools. B

#### Dismissing the appeal, the Court

HELD : 1.1. In the present case, when two units are located adjacent to one another and there are only two teachers with an Aaya, a Clerk and a Peon, it is difficult to believe that the Society which runs 30 schools would run a separate school consisting of such a small number of staff. If the unit of the appellants-school was not part of the unit of Higher Secondary School, the Head Clerk could not have been in possession of the particulars of the appellants-school and could not have furnished such particulars to the Inspector when he visited the school in connection with the grant of the code number. Undisputably, the two units are run by the same Society and they are located in one and the same address thereby establishing geographical proximity. All these facts clearly point out to one factor that the two units constitute one single establishment. After all appellants-school caters to nursery classes, while the higher classes are provided in Higher Secondary School. Thus, the link between the two cannot be ruled out. [481-G, H; 482-A, B] C D E

1.2. Whether two units are one or distinct will have to be considered in the light of the provisions of Section 2-A of the Employees' Provident Funds and Miscellaneous Provisions Act which declares that where an establishment consists of different departments or has branches whether situate in the same place or in different places, all such departments or branches shall be treated as parts of the same establishment. In such cases, it has to be considered how far there is functional integrality between the two units, whether one unit cannot exist conveniently and reasonably without the other, and on the further question, in matters of finance and employment, the employer has actually kept the two units distinct or integrated. Each case would depend upon its own peculiar facts and has to be decided accordingly. [481-D, E, F] F G

*Management of Pratap Press, New Delhi v. Secretary, Delhi Press* H

A *Workers' Union, Delhi*, AIR (1960) SC 1213, referred to.

2. The fact that the Higher Secondary School has been excluded from the purview of the Employees' Provident Funds and Miscellaneous Provisions Act in view of the fact that the provident fund in respect of all the employees is subscribed under another scheme cannot help the appellant in any way.

B The two establishments have more than 20 employees and the exemption granted under Section 17 of the Act is subject to the condition that such exclusion will not apply to the appellant's unit because the same would not be covered under another scheme for subscribing to the provident fund. When the entire establishment is covered by the Act, only part of the establishment is excluded and condition of exclusion being applicable only to a part, the appellant cannot rely upon that fact to claim non-applicability of the Act on the ground that it falls short of the minimum number of employees.

[482-C, D, E, F]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3320 of 1997.

D From the Judgment and Order dated 30.10.96 of the Delhi High Court in C.W. No. 3742 of 1994.

H.S. Parihar, D.R. Thadani, A.C. David and Kuldeep S. Parihar for the Appellant.

E Ms. B. Sunita Rao, Ajay Sharma, C. Radhakrishnan and B.K. Prasad for the Respondents.

The Judgment of the Court was delivered by

F **RAJENDRA BABU, J.** : The appellant is aggrieved by the application of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 [hereinafter referred to as 'the Act']. The appellant-institution is run by Baptist Union North India, a registered Society under the Registration of Societies Act, 1860. The said Society runs two schools at 17, Darya Ganj, Delhi, namely, Francis Girls Higher Secondary School which was established in 1916 and the appellant-school which runs nursery classes. The appellant-school was started in the year 1971. The claim of the appellant-school is that Francis Girls Higher Secondary School and the appellant-school, Noor Niwas Nursery Public School, are two different institutions having separate and independent accounts and are managed by two different Managing H Committees. The appellant has four employees, namely, 1 Head Mistress, 1

Teacher, 1 Peon and 1 Aaya and it being a separate establishment is not covered by the provisions of the Act. Therefore, it is contended that Francis Girls Higher Secondary School and the appellant-school cannot be treated as one establishment for the purpose of the Act. A

The respondents' contention is that an Inspector of the Department visited Francis Girls Higher Secondary School when Mrs. P. Wadhavan, 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 for a common number for depositing the contribution to the provident fund was obtained under duress. But while denying the same he clearly stated that this information had been furnished by Mrs. P. Wadhavan on 21.04.1982 voluntarily. B C

The Provident Fund Commissioner on this material held that the two institutions constitute one and the same establishment and, therefore, is covered by the Act. This order of the Provident Fund Commissioner was unsuccessfully challenged before the High Court. Hence this appeal. D

Whether two units are one or distinct will have to be considered in the light of the provisions of Section 2-A of the Act which declares that where an establishment consists of different departments or has branches whether situate in the same place or in different places, all such departments or branches shall be treated as parts of the same establishment. In such cases, the court has to consider how far there is functional integrality between the two units, whether one unit cannot exist conveniently and reasonably without the other, and on the further question, in matters of finance and employment, the employer has actually kept the two units distinct or integrated. In fact, this Court set out certain tests in *Management of Pratap Press, New Delhi v. Secretary, Delhi Press Workers' Union, Delhi*, AIR (1960) SC 1213. However, we may point out that each case would depend upon its own peculiar facts and has to be decided accordingly. E F

In the present case, when two units are located adjacent to one another and there are only two Teachers with an Aaya, a Clerk and a Peon, it is difficult to believe that the Society which runs 30 schools would run a separate school consisting of such a small number of staff. If the unit of the appellant-school was not part of the unit of Francis Girls Higher Secondary School, the Head Clerk, Mrs. Wadhavan, could not have been in possession G H

- A of the particulars of the appellant-school and could not have furnished such particulars to the Inspector when he visited the school in connection with the grant of a code number. Undisputably, the two units are run by the same Society and they are located in one and the same address thereby establishing geographical proximity and nothing worthwhile has been elicited in the cross-examination of the Inspector in regard to inquiries made by him from Mrs. P. Wadhavan. Mrs. P. Wadhavan was not examined before the Provident Fund Commissioner. All these facts clearly point out to one factor that the two units constitute one single establishment. After all appellant-school caters to nursery classes, while the higher classes are provided in Francis Girls Higher Secondary School. Thus, the link between the two cannot be ruled out. In the facts and circumstances of the case, we hold that the view taken by the Provident Fund Commissioner as affirmed by the High Court in this regard is correct.

- However, the learned counsel for the appellant drew our attention to the letter sent to Francis Girls Higher Secondary School wherein the said school has been excluded from the purview of the Act in view of the fact that the provident fund in respect of all the employees is subscribed under another scheme. The learned counsel submitted that if the two units were put together as a single establishment, the Act would be applicable and otherwise not, inasmuch as it falls short of the number of minimum of employees for the applicability of the Act under Section 1(3)(b) of the Act. We are not impressed with this argument. The two establishments have more than 20 employees and the exemption granted under Section 17 of the Act is subject to the condition that such exclusion will not apply to the appellant's unit because the same would not be covered under another scheme for subscribing to the provident fund. When the entire establishment is covered by the Act, only part of the establishment is excluded and condition of exclusion being applicable only to a part, we fail to understand as to how the appellant can rely upon the said letter to claim non-applicability of the Act on the ground that it falls short of the number of employees.

We do not find any good reason to interfere with the order made by the High Court affirming the view taken by the Provident Fund Commissioner. This appeal is, therefore, dismissed.

M.P.

Appeal dismissed.