

REGIONAL PROVIDENT FUND COMMISSIONER

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v.

SANATAN DHARAM GIRLS SECONDARY SCHOOL AND ORS

OCTOBER 30, 2006

[DR. AR. LAKSHMANAN AND AND TARUN CHATTERJEE, JJ.]

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Employees Provident Funds and Miscellaneous Provisions Act, 1952—Section 16(l)(b)—Exemption from operation of Act—Establishments belonging to or under control of Government whose employees are entitled to benefits of contributory provident fund under scheme framed by Government—Non-Governmental Educational Institution covered under Rajasthan Non-Governmental Educational Institutions Act, 1989 and availing benefit of provident fund scheme formulated therein—Held: Under the Act of 1989 the State Government exercised substantive control over educational institutions even though they were not “owned” by it, and also had authority to direct, restrict or regulate their working—Hence those institutions were exempted from operation of Act of 1952 — Also, as the State Act of 1989 was enacted subsequent to the applicability of Act of 1952, the former eclipsed the latter by application of Art. 254(2) Constitution of India, 1950.

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Words and phrases—Belonging to or control of Government—Meaning of in context of Section 16(l)(b) of Employees Provident Funds and Miscellaneous. Provisions Act, 1952.

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Respondent is a Non-Governmental Educational Institution. In the year 1989, an amendment to Section 16(1)(b) of Employees Provident Fund and Miscellaneous. Provisions Act, 1952 exempted certain ‘establishments from the operation of that Act, which *inter alia* included establishment belonging to or under the control of the Central Government or a State Government and whose employees are entitled to the benefits of contributory provident fond or old age person in accordance with any scheme or rule framed by the Central Government or the State Government governing such benefits’. After this, the State passed Rajasthan Non-Government Educational Institutions Act, 1989 and formulated a provident scheme under it. Respondents were paying their provident find dues according to that scheme. However, later on, the State Government ordered implementation of the Act of 1952 with respect to the

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A respondents, and thereupon not only transferred their existing Provident Fund amount from the State treasury to the office of appellant, a Regional Provident Fund Commissioner, but also further directed them to deposit their contributions with the appellant. High Court allowed the writ petitions of respondents challenging this order. Hence the present appeals.

B Respondents contended that (i) they were covered under the exception enumerated in the amended section 16(1)(b) of the Act of 1952 (ii) as per Article 254(2) of the Constitution of India, 1950, the State Act of 1989 eclipsed the Central Act of 1952.

C Dismissing the appeals, the Court

D HELD: 1.1. The two words used in the said Section 16(1)(b) have different connotations. The words “belonging to” signify ownership i.e. the Government owned institutions would be covered under the said part and the words “under the control of” signify control other than ownership since ownership has already been covered under the words “belonging to”. It must be also noted that the two words are separated by the word “OR” and therefore these two words 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 the privately owned institutions can be “under” the control of” the Government in various ways, [862-C-E]

E *Shamrao Vithal Coop. Bank Ltd. v. Kasargode Panduranga Maliya*, [1972] 4 SCC 600 and *State of Mysore v. Allum Karibasappa*, [1974] 2 SCC 498, relied on

F 1.2. 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. [863-G-H]

G 1.3. The State Government has the power of Superintendent or the authority to direct, restrict or regulate the working of the educational institutions. [864-C-D]

2.1. Benefit of Art. 254(2) is available. Admittedly the State Act has been enacted and has received the assent of the president subsequent to the applicability of the EPF Act, 1952 on the educational institutions.

[864-H; 865-A]

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M.P. Shikshak Congress v. R.P.F. Commnr., [1999] 1 SCC 396, **A distinguished.**

State of Bihar v. Bhabapritananda Ojha, AIR (1959) SC 1073 and *Bhagwat Singh v. State of Rajasthan*, [1964] 5 SCR 1, referred to

2.2. The respondent-institutions have been paying the provident fund dues to the State Government in accordance with the Scheme framed by the State Government under the State Act and thus the employees of the respondent-institutions are entitled to the benefit of the provident fund.

[861-H; 862-A]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7016 of 2004. **C**

From the Final Judgment and Order dated 16.9.2002 of High Court of Judicature for Rajasthan at Jodhpur in D.B. Civil Special Appeal No. 467/2001 in S.B. Civil Writ Petition No. 2320/1998.

WITH **D**

CIVIL APPEAL Nos. 7738/2004, 7740/2004, 7739/2004, 715-737/2005, 739/2005, 742/2005, 741/2005, 746/2004, 745/2005, 738/2004, 747/2004, 748/2005, 740/2005, 750/2005, 749/2005, 752/2005, 751/2005, 743/2005, 744/2005 and 753/2005.

Aruneshwar Gupta, A.A.G., H.L. Aggarwala, S.K. Dubey, S.K. Gambhir, Ashok Bhan, Sunita Sharma, Kiran Bhardwaj, D.S. Mahra, Anil Katiyar, B.V. Balaram Das, Naveen Kumar Singh, Mukul Sood, Shashwat Gupta, Shikha Tandon, B.S. Banthia, Vikas Upadhyay, M.P. Jha, Ram Ekbal Roy, Harshvardhan Jha, Amit Mishra, Anil K. Sharma, B.K. Sharma, Anil K. Chopra, Sushil Kumar Jain, Dr. Manish Singhvi (for P.V. Yogeswaran), Pratibha Jain, H.D. Thanvi, Puneet Jain, Sarad Singhania, Manoj Prasad, Ajay Kumar Chaudhary, K.K. Srivastava, Ajatshatru, Ashok K. Mahajan, Satish Chand Gupta, Babita Kr. Arya, Dharam Bir Raj Vohra, J.P.N. Gupta, Pankaj Kr. Singh, Dr. Vinod K. Tewari, K.L. Janjani, R.S. Suri, Shivendra Dwivedi, Anjali Bhandari Doshi and Ruchi Kohli for the appearing parties. **E**

The Judgment of the Court was delivered by **F**

DR. AR. LAKSHMANAN, J. In the present matter, the appellant is the Regional Provident Fund Commissioner (RPFC) and the respondents are Sanathan Dharam Girls Secondary School, a Non-Governmental Educational **G**

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A Institution and the State of Rajasthan among others.

Brief facts in the matter are as follows:

The Employees Provident Fund and Misc. Provisions Act (in short 'the EPF Act') came into force in 1952. In 1982, vide Gazette notification by the Government, Educational Institutions were added in the Schedule of the Act under section 1(3). The schedule reads thus:

- B**
- “(i) any University;
- (ii) any college whether or not affiliated to a University
- C**
- (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.
- D**
- (vi) any other institution in which the activity of imparting knowledge or training is systematically carried on.”

Further in 1988, clause (b) of section 16(1) of the EPF Act, 1952 was substituted by new clauses (b) (c) and (d). The amended provisions read as under:

- E**
- “16 (1)(b): 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 benefits of contributory provident fund or old age person in accordance with any scheme or rule framed by the Central Government or the State Government governing such benefits;
- F**
- (c) to any other establishment set up under any Central Provincial or State Act and whose employees are entitled to the benefits of contributory provident fund or old age person in accordance with any scheme or rule framed under that Act governing such benefits;
- G**
- (d) to any other establishment newly set up until the expiry of a period of three years from the date on which such establishment is has been set up”

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The State Government had framed rules known as 'The Rules for payment of Grant-in-Aid to non-governmental educational, cultural and physical educational institutions in Rajasthan, 1963'. A

Later in 1989 the Rajasthan Legislative Assembly passed "The Rajasthan Non-Government Educational Institutions Act, 1989" which came into force from 01.01.1993. B

On 05.08.1997, the State Government (Finance Department) issued an order to implement the provisions of the EPF Act, 1952 on Non-Governmental aided educational institutions employing 20 or more persons.

On 24.01.1998, the State Government (Educational Department) passed an order by which it transferred the existing Provident Fund amount from the State treasury to the office of Regional Provident Fund Commissioner. C

Later on 24.08.1998, the State Government (Finance Department) passed an order about transfer of Provident Fund amount from State treasury to the Provident Fund Commissioner. D

Various Educational Institutions filed 21 writ petitions in the High Court of Rajasthan, challenging the orders and circulars of the State Government issued on 05.08.1997, 24.01.1998 and 24.08.1998. The Regional Provident Fund Commissioner also filed 2 writ petitions in the High Court. E

The learned Single Judge dismissed the writ petitions filed by the Regional Provident Fund Commissioner and allowed the 21 writ petitions filed by different Educational Institutions by an order dated 16.01.2001 stating that the state Act would override the provisions of EPF Act, 1952 and also observed that the educational institutions before him would fall under the exception under the amended section 16(1)(b) of the EPF Act. F

Against this order of the learned Single Judge, the RPFC went on appeal before the Division Bench of the Rajasthan High Court. However, the Division Bench also observed that the EPF Act will not apply to the Educational Institutions before the Court and dismissed the appeals filed by the RPFC. G

Further on 23.02.2003, the respondent, Educational Institution filed the S.B. Civil Writ Petition before the High Court challenging the order of the State Government directing the Non-Governmental aided Educational Institution employing 20 or more persons to deposit its contribution with the RPFC. The High Court disposed off the matter in favour of the Educational Institution. H

A in line with the decision in the matter of *Balbari Vidya Mandir Churu v. State of Rajasthan & Ors.*, (S.B. Civil Writ Petition No. 1085/2000). Against this decision of the High Court, the RPFC went on appeal to the Division Bench of the High Court which in turn by an order dated 16.09.2002, dismissed the appeal.

B Being aggrieved by this order of the High Court of Rajasthan, the appellant, RPFC has approached this Court. As we understand, the issue before this court is:

C * Whether the provisions of EPF Act, 1952 are applicable to the Non- Governmental Educational Institutions or not in view of the provisions contained in Section 16 of the EPF Act.

* And whether the respondents Institutions will fall under the exceptions stated in section 16(1) (b) of the EPF Act.

D We heard Mr. H.L. Aggarwala, learned senior counsel appearing for the appellant, Mr. Aruneshwar Gupta, learned Additional Advocate General appearing for the respondent and Mr. S.K. Dubey, learned senior counsel, Mr. Sushil Kumar Jain and Manish Singhi, learned counsel appearing for the interveners. We have also perused all the documents filed before us.

E Learned senior counsel appearing for the appellant, the RPFC stated that, the Central Act that is the EPF Act came into force in 1952, the same was made applicable to all Educational Institutions from 06.03.1982 and there were no State Acts or Rules in place which dealt with the matters relating to Provident Fund in Educational Institutions. Later in 1989 the Rajasthan Legislative Assembly passed "The Rajasthan Non-Government Educational Institutions Act, 1989 which came into force from 01.01.1993.

F Therefore, during the period from 06.03.1982 to 31.12.1992, the Central Act, that is the EPF Act, 1952 will be applicable on all Educational Institutions employing more than 20 employees. To establish this, the learned counsel invited our attention to *M.P. Shikshak Congress and Ors. v. R.P.F. Commissioner, Jabalpur and Ors.*, [1999] 1 SCC 396, case, where this Court observed that:

H "However, after the application of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 to education institutions, in 1983 new Rules were framed by the State of Madhya Pradesh under Act 20 of 1978. These are referred to as the State Rules of 1983. Under the

State Rules of 1983, for the first time a scheme was set out for Contributory Provident Fund covering the teachers and employees of aided schools. The State Government, however, was conscious of the fact that the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 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 State Rules of 1983 would not apply where the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 apply. Clearly, therefore, far from there being any conflict between the State and the Central Legislation, the State Legislation by Rules framed in 1983 has excluded from the operation of the State scheme as framed under the 1983 Rules, those employees to whom the Central Act applies.

16. In this view of the matter, there can be no doubt that for the period 1st August, 1982 to 1st August, 1988 the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 was applicable to such teachers and employees of the aided schools in the State of Madhya Pradesh who are covered by the provisions of the scheme framed thereunder. The orders of the Regional Provident Fund Commissioner, therefore, in so far as the orders cover the period 1st August, 1982 to 1st August, 1988 are valid"

Further the learned senior counsel submitted that, the Educational Establishment covered or coverable under EPF Act, 1952 during the period from 06.03.1982 to 31.12.1992 will remain covered or coverable under Central Act of 1952 itself even after the coming into force of the State Act of 1989 or the State Rules of 1993, as RPFC has already settled the PF Accounts of their employees on retirement and has settled their pension cases, family pension cases, children and parents pension cases and monthly pension cases and paying monthly pension/family pension regularly for number of years.

It was submitted by the learned counsel appearing for the appellant that, the learned single Judge and the Division Bench of the Rajasthan High Court have not correctly appreciated and interpreted Section 16(1)(b) of the EPF Act, 1952 and have wrongly recorded that all Educational Institutions are under the control of the State Government as they are recognized by the State Act of 1989. He pointed out that these Educational Institutions were running and are managed by registered societies and none of them are owned or managed by the State Government. Merely on the basis of recognition under

A the State Act of 1989 it could not have been held that these Educational Institutions are under the control of the State Government as required under section 16(1)(b) of the EPF Act, 1952.

B Further, the counsel stated that, only the Educational Institutions whose management has been taken over by the State Government under section 10 of the State Act, 1989 shall fall within the exception under section 16(1)(b) of the State Act of 1989. Section 10 reads as follows:

C “10. Powers of the State Government to take over management-(1) notwithstanding anything contained in any law for the time being in force, whenever it appears to the State Government that the managing committee of any recognized institution has neglected to perform any of the duties assigned to it by or under this Act or the rules made there under or has failed to manage the institution properly and that it has become necessary in the public interest to takeover the management of such institution, it may after giving to such managing committee a reasonable opportunity of showing cause against the proposed action, take over such management and appoint an administrator to exercise control over the assets of the Institution and to run the institution for such period as the State Government may from time to time fix.

D (2) Where, before the expiry of the period fixed under sub-section (1) the State Government is of opinion that it is not necessary to continue the management of the institution by an administrator, such management shall be resorted to the managing committee”.

E While concluding his submissions, the learned senior counsel stated F that the High Court did not take into consideration that the Central Act is more beneficial for the employees than the State Act as there is compulsory pension scheme, called “The Employees Pension Scheme, 1995” under the Central Act.

G Mr. Aruneshwar Gupta, learned Additional Advocate General, appearing for the State of Rajasthan, respondent herein submitted that, in the year 1989 the Government of Rajasthan enacted the Rajasthan Non-government Educational Institutions Act, 1989. The Act came into force on 01.01.1993. The State Government after the enactment of the said Act has clearly occupied the field concerning the deposit of PF of the employees of Non-Government H Institutions and it clearly overrides the provisions of the EPF Act, 1952. He

submitted that, it is relevant to mention that the contribution to the PF A
 pertains to Entry 24 of List III of the Schedule 7 of the Constitution of India.
 Therefore, as far as post 1993 period is concerned, the RPFC do not have any
 subsisting legal right as that Act of 1989 of Rajasthan shall prevail and to this
 extent the issuance of orders dated 05.08.1997, 28.01.1998 and 24.08.1998 by
 the Government of Rajasthan amounted to incorrect application of law and the B
 AG appearing for the state of Rajasthan clearly conceded to the same before
 the High Court of Rajasthan. Thus it is clear that the Educational Institutions
 are outside the purview of the EPF Act.

Besides, the Central Act itself contemplates non-application of the
 Central Act in certain situations especially enumerated under section 16 of the C
 Act of 1952. Section 16 (1) (b) clearly mentions that the establishments which
 are under the control of state government will not fall within the purview of
 the Central Act, 1952. Moreover, there is a scheme framed for contributory PF
 under the chapter VIII of the Rules of 1993.

In conclusion it was submitted by the learned counsel for the respondent D
 State that in the present fact scenario, the provisions of section 16(1)(b) of
 the Central Act, 1952 are attracted and therefore, the appellant cannot claim
 any right over the contributory provident fund of the employees of the
 Educational Institutions covered by the Act of 1989.

Mr. S.K. Dubey and Sushil Kumar Jain, learned counsel appearing for E
 the interveners, submitted as follows:

- (1) that their institutions are governed under the provisions of the
 Rajasthan Non-Government Educational Institutions Act, 1989.
 The said Act was enacted in the year 1989 and was reserved for
 and received Presidential assent on 4.6.1992 in terms of Article F
 254(2) of the Constitution of India. The said Act came into force
 with effect from 4.7.1992.
- (2) that Entry 24 of List III of the VII Schedule read with Article G
 246(2) of the Constitution of India allows concurrent power to
 the Center and the State Governments to legislate with regard to
 Provident Funds. The said entry provides as under:

“Welfare of labour including conditions of work, provident funds,
 Employer’s liability, workman’s compensation, invalidity and old age
 pension and maternal benefits.”

- A (3) that the Union had enacted the Employees Provident Funds and Miscellaneous Provisions Act, 1952 in exercise of the said powers. The State Government of Rajasthan has, thereafter, enacted the Rajasthan Non-Government Educational Institutions Act, 1989, which also includes a power to make a provident fund scheme.
- B It was also submitted that the State Government has, thereafter, framed the scheme under the rules and the respondent-institutions are governed by the said scheme. Since the State Act has received Presidential assent, 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. The said Article
- C provides as under:

“254. Inconsistency between the laws made by Parliament and Laws made by Legislatures of States:-

- (1)
- D (2) Where a law made by the legislature of the State with respect to one of the matters enumerated in the concurrent list contains any provisions repugnant to the provisions of an earlier law made by the Parliament or any existing law with respect to that matter, 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 that State.
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Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the legislature of the State.”

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- (4) that the State Act would “eclipse” the Central Act within the State of Rajasthan and therefore, the Central Act (i.e. the EPF Act) would not apply to the educational institutions in the State of Rajasthan which are governed by the State Act. Undoubtedly, the respondent-institutions are covered under the State Act and as such the provisions of the said Act would be applicable on the respondent-institutions.
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In support of his submission, he relied on the judgment of this Court in *State of Bihar v. Bhabapritananda Ojha*, AIR (1959) SC 1073. In this case, this Court dealt with the provisions of the Bihar Hindu Religious Trusts Act,

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1950(Bihar I of 1951), which received the president's assent on February 21, 1951 and came into force on August 15, 1951. The said Act established the Bihar State Board of Religious Trusts to discharge the functions assigned to the Board by the Act. The said Act was challenged on the grounds that it was *ultra vires* of the Bihar Legislature and in the alternative, it was contended that even if it was construed that the Act was *intra vires*, it did not apply to the Baidyanath Temple and the properties appertaining thereto by reason of the circumstance that the said temple and its properties were administered under a Scheme made by the Court of the District Judge of Burdwan and approved by the Calcutta High Court, both of which are situated outside the territorial limits of Bihar. After considering the matter, this Court held as under:

"..If, as we have held, it is open to the Bihar Legislature to legislate in respect of religious trusts situate in Bihar, then that Legislature can make a law which says, as in sub-s. (5) of s. 4 of the Act, that s. 92 of the Code of Civil Procedure shall not apply to any religious trust in the State of Bihar. If sub-s. (5) of s. 4 of the Act is valid as we hold it is, then no question really arises of interfering with the jurisdiction of the District Judge of Burdwan or of the Calcutta High Court in respect of the Baidyanath temple, inasmuch as those courts exercised that jurisdiction under s. 92, Code of Civil Procedure, which no longer applies to the Baidyanath temple and the properties appertaining thereto, after the commencement of the Act. It is true that the Act does put an end to the jurisdiction under s. 92, Code of Civil Procedure, of all courts with regard to religious trusts situate in Bihar, but that it does by taking these trusts out of the purview of s. 92. In other words, the Act does not take away the jurisdiction of any court outside Bihar but takes the religious trusts in Bihar out of the operation of s. 92 so that a court outside Bihar in exercise of its jurisdiction under s. 92 will decline to deal with a religious trust situate in Bihar just as it will decline to entertain a suit under that section regarding a private trust of religious or charitable nature. Civil Procedure, including all matters included in the Code of Civil Procedure at the commencement of the Constitution, is item 13 of the Concurrent List. It has not been disputed before us that it is open to the Bihar Legislature to amend the Code of Civil Procedure while legislating in respect of religious endowments and religious institutions in Bihar, and the President's assent having been received to the Act, the law made by the Bihar Legislature shall prevail in that State, under Art. 254(2) of the Constitution, in respect of all religious trusts situate in

A Bihar.

In the case of *Bhagwat Singh v. State of Rajasthan*, [1964] 5 SCR 1, with regard to the applicability of the provisions of the Rajasthan Industrial Tribunal (Constitution & Proceedings) Validating Act, 1959, this Court held as under:

B “14. It is unnecessary however to consider the merits of these
C contentions because the Legislature has remedied the defects, if any,
D in the constitution of the Tribunal, by enacting the Rajasthan Industrial
E Tribunal (Constitution and Proceedings) Validating Act, 1959, which
F was reserved for the consideration of the President of India and has
G received his assent. By s. 2(1) of that Act, notwithstanding any
judgment, decision or order of any court and notwithstanding any
defect or want of form or jurisdiction, the Industrial Tribunal for
Rajasthan, constituted under s. 7 of the Industrial Disputes Act, 1947,
by Government notification dated the 2nd June, 1953, as amended by
order dated the 9th March, 1956, shall, as respects the period
commencing on the 10th day of March 1957 and ending with the 15th
day of April, 1959, be deemed to have been duly constituted under
s. 7A of the said Act. By sub-s. (2) it is provided that notwithstanding
any judgment, decision or order of any court all references made to
and all proceedings taken and orders passed by the Industrial Tribunal
constituted in sub-s. (1) between the period 10th March, 1957 and
15th April, 1959, shall be deemed respectively to have been made,
taken and passed as if the said Tribunal were constituted under s. 7A
of the Act. It is clear from the validating provisions that the Tribunal
originally constituted under s. 7 of the Industrial Disputes Act, 1947,
before it was amended by Act 36 of 1956 is to be deemed to have been
duly constituted under s. 7A, and the reference made on December
18, 1957 is to be deemed to have been made as if the Tribunal were
constituted under s. 7A of the amended Act. The Validating Act is,
because of Item 22, List III of the Seventh Schedule to the Constitution,
within the competence of the State Legislature, and it was reserved
for the consideration of the President and has received his assent. It
must by virtue of Art. 254(2) prevail in the State of Rajasthan.

(5) that in the present case, the provisions of the said Act and the
Rules made thereunder apply and prevail over the provisions of
the Employees Provident Funds and Miscellaneous Provisions
Act, 1952. It was further submitted that there is a clear conflict

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among the provisions in respect of the Provident Fund Scheme and the resultant effects thereto between the State and the Central Act and as the State Act has received Presidential assent, the provisions of the said Act would apply. A

(6) that no arguments have been advanced by the appellants in the present case with regard to the present submissions before the High Court nor were any arguments raised by the appellant before this Court. It was also submitted that in the absence of any rebuttal by the respondent, it is clear that the provisions of the State Act would prevail over the Central Act. B

Institutions fall under exception contained under Section 16(1)(b) of the EPF Act, 1952. C

Section 16(1)(b) of the EPF Act, 1952 provides as under:

“16(1) This Act shall not apply-

(a) D

(b) 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; or E

(c) to (e)

In order to be covered under the exception to the EPF Act, 1952 stated above, following two conditions have to be satisfied by the establishment seeking to be exempted from the provisions of the EPF Act, 1952: F

(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. G

We heard the parties in detail. The submissions made by the learned counsel appearing for the respondents merit acceptance. It is not in dispute that the respondent-institutions have been paying the provident fund dues H

A to the State Government in accordance with the Scheme framed by the State Government under the State Act and thus the employees of the respondent-institutions are entitled to the benefit of the provident fund. By the orders impugned by the respondent-institutions, the State Government has sought to transfer the balance standing to its credit to the Regional Provident Fund Commissioner. Thus it is clear that the respondent-institutions have been paying in accordance with the Scheme and there is no grievance with regard to the same.

In respect to the contention of the respondent that the establishment *belonging to* or *under the control* of the Central Government or a State Government, it was submitted that the establishments must either be (a) *belonging to* or (b) *under the control* of the Central Government or the State Government. In our view, the two words 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*" signify control other than ownership since ownership has already been covered under the words "*belonging to*". It must be also noted that the two words are separated by the word "OR" and therefore these two words 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 the privately owned institutions can be "*under the control of*" the Government in various ways.

Under the State Act itself, the "Control" by the State is in the following ways:

(a) Under Section 3 of the State Act, the State Government grants recognition to the "Non-government educational institutions".

It was submitted that recognition by the State is of prime importance for running and operating an educational institution. The said recognition can be withdrawn on the failure of the institution to abide by the terms and the conditions of the grant of recognition.

(b) Under Section 7 of the State Act, the State Government grants aid to only recognized educational institutions. The aid given by the State can be used only for the purpose for which the aid has been given. Under Section 8, the institutions are thereafter

required to keep accounts in the manner prescribed by the State. A
It was submitted that in such manner, the State exercises
Financial Control over the institutions.

- (c) Under Section 9, it has been prescribed that the institutions shall
be governed by a managing committee and Section 10 of the Act
empowers the State to take over management of the institutions B
“whatever it appears to the State that the Managing Committee
has neglected to perform the duties assigned to it by or under
the Act or the Rules made thereunder.
- (d) Chapter V of the Act relates to properties of the institutions and
the manner in which the institutions can manage the properties C
of the institution. It was submitted that under Section 13 of the
Act, the institutions have to apply and get the approval of the
competent authority set up under the said Act before transferring
the management of the institution. Under Section 15, restrictions
have been placed on the transfer of immovable properties of the D
institutions.
- (e) Section 14 of the Act prohibits closure of any institution or its
class or the teaching of any subject therein without notice in
writing to the competent authority. It was submitted that the
government thus has *Functional control* over the institution. E
- (f) Chapter VI of the State Act deals with recruitment and removal
etc. of employees. Their salary, conditions of service, provident
fund, code of conduct are all prescribed under the Act. The Act
further prescribes setting up of a Tribunal for resolution of the
disputes whose decision is final and binding on the parties. F

The State Government also exercises *Administrative Control* over the
institution. Section 17 deals with the manner of recruitment and Section 18
deals with the procedure in which the employees may be removed or dismissed
or reduced in rank. Section 28 permits the State Government to prescribe the
code of conduct of the employees and Section 29 enjoins upon the institutions G
not to give to its employees a pay lesser than the scales of pay and the
allowances paid to similar categories of the State Government.

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 H

A word “control” has not been defined under the EPF Act, 1952.

However, this Court in *Shamrao Vithal Coop. Bank Ltd. v. 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:

B “The word “control” is synonymous with superintendence, management or authority to direct, restrict or regulate.”

In the case of *State of Mysore v. Allum Karibasappa*, [1974] 2 SCC 498 at page 501, this Court defined the words “word control” as under:

C “The word “control” suggests check, restraint or influence Control is intended to regulate and hold in check and restrain from action.”

We further observe that the State Government has the power of Superintendent or the authority to direct, restrict or regulate the working of the educational institutions. It was, therefore, submitted that the institutions had 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.

D In this context we may refer to the decision cited by the appellant in the case of *M.P. Shikshak Congress v. R.P.F. Commnr.*, [1999] 1 SCC 396, in which it was stated that the provisions of the E.P.F. Act apply in supersession of the State Act. This contention is not correct; the said case is clearly distinguishable on facts as has been noted in the judgment itself. The State Act did not provide for establishment of any Scheme as has been provided under the provisions of the State Act in the State of Rajasthan. In this regard, this Court noted as under:

E “12.....The Act did not even provide for any scheme for setting up a provident fund. The Act incidentally required that the institutional contribution to any existing provident fund scheme should be paid into the institutional fund set up under the said Act.....”

G In addition to the above, the said case is also distinguishable with regard to the contention of repugnancy and Article 254(2) of the Constitution. In the said case, the Act in relation to the State of Madhya Pradesh came into force prior to the application of the provisions of the EPF Act, 1952 on educational institutions and therefore the benefit of Art. 254(2) was not

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available to it. In the present case, however, admittedly the State Act has been enacted and has received the assent of the President subsequent to the applicability of the EPF Act, 1952 on the educational institutions. In this regard, this Court in the said case noted as under: A

“13. It was by reason of the notification of 06.03.1982 that the Central Act was extended to educational institutions. The Employees’ Provident Funds and Miscellaneous Provisions Act, 1952, therefore, became applicable to educational institutions in the State of Madhya Pradesh for the first time on 6-3-1982. This was much later than the enactment of the State Act 20 of 1978. The parliamentary enactment, therefore, would prevail over the State Act 20 of 1978, assuming that the State Act of 1978 created or effected any scheme for provident fund. Article 254(2), therefore, has no application in the present case.” B
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Mr. Manish Singhvi, learned counsel appearing for respondent No.1 in Civil Appeal No. 748 of 2005 reiterated the submissions made by them in the counter affidavit filed in the special leave petition No. 2625 of 2003. He submitted that the demand issued by the Regional Provident Fund Commissioner at Udaipur was *ultra vires* and beyond jurisdiction because there was already an exemption under law for the purposes of application of this Act and, therefore, the order dated 23.05.1997 was a nullity. It was further submitted that the exemption was withdrawn from October, 1993 onwards and, therefore, the exemption notification granted under this Act was prevalent between January, 1983 to September, 1992. He has also given the details in regard to the details of payment of Provident Fund/Pension scheme in accordance with the directions issued by the State Government/Central Government in the counter affidavit filed by them. He also invited our attention to the notification dated 14.02.1983 issued by the Government of Rajasthan in exercise of the power conferred by sub-section 17 of the EPF and Misc. Provisions Act, 1952 exempting schools added by the State Government from the operation of the said Act subject to the condition that the scheme of the Provident Fund applicable to the employees of educational institutions vide No. F7(13) Education GR 74, dated 12.11.1974 shall be reviewed by the Committee which shall be constituted by the Education Department with representatives of the Finance Department and Labour Department to review the existing schemes so as to bring inconformity with the central scheme if needed. It is beneficial to refer to the notifications dated 23.12.1988 and 26.12.1993 in this context. The said two notifications read thus: D
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"GOVERNMENT OF RAJASTHAN

Labour Department

No.F.13(9)Shram/82-Pt.II, Jaipur

Dtd.23.12.1988

B

NOTIFICATION

In exercise of Powers conferred by Sub-section (1) of Section 17 of the Employees Provident Funds & Miscellaneous Provisions Act, 1952 (Central Act 19 of 1952) and in supersession of this department notification No.F.13(9)Shram/82-Pt.II dated 14.2.83 the State Government hereby exempts all schools and educational institutions aided by the State Government from the operation of all the provisions of the Provident Fund Scheme only.

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This shall have immediate effect.

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BY ORDER OF THE
GOVERNOR

Sd/- K.L.KOCHAR

SPECIAL SECRETARY TO THE GOVERNMENT"

"GOVERNMENT OF RAJASTHAN

E

Labour Department

No.F.13(9)Shram/82-Pt.II, Jaipur

Dtd.26.10.1993

F

NOTIFICATION

Notification No.F.13(9)Shram/82-Pt.II dated 14.02.1983 and even notification dated 23.12.1988 issued by this department under Sub-section (1) of Section 17 of the Employees Provident Fund & Miscellaneous Provisions Act, 1952 (Central Act 19 of 1952) is hereby nullified with immediate effect.

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In this regard, it is hereby clarified that if the relief-granted educational institutions want to seek exemption for their employees, for whom they get relief, under the provisions of Employees, Provident Fund Scheme 1952 then such educational institutions can seek exemption from Regional Provident Fund Commissioner, Rajasthan, Jaipur as per para 27 of Employees Provident Fund Scheme 1952, after obtaining applications from their such employees.

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By the Order of Governor Sd/- Ramveer Singh Bhanwar Labour
Commissioner and Deputy Secretary to the Government” A

Learned counsel appearing for the respondent in C.A. Nos. 715-737 of 2005 also drew our attention to the counter affidavit filed on behalf of the State of Rajasthan and the educational institutions. It is submitted that the order of recovery is patently illegal and unjustified because of the fact that the respondent institution does not come under the purview of the Act of 1952. He would further submit that after the amendment was made in Section 16 of the Act by the EPF and Miscellaneous Provisions Amendment Act (33 of 1988) all establishments belonging to or under the control of the Central Government or State Government have been exempted from the provisions of the Act. Arguing further, he submitted that the words in Section 2(b) and 2(a) are so clear and unambiguous that no further interpretation need be made to amplify the same and that the provisions made in the enactment of 1989 make it clearer that the respondent institution is a recognized educational institution managed by the private management and is within the effective management of the State Government and, therefore, it is entitled to be excluded from the applicability of the Central Act, 1952. B C D

Learned counsel appearing for the respondents in all the other appeals adopted the arguments of Mr. Sushil Kumar Jain.

For the foregoing reasons, all the civil appeals filed by the Regional Provident Fund Commissioner stand dismissed and the judgment and order passed by the Division Bench of the High Court dated 16.09.2002 and all the judgments on different dates by different Division Benches stand affirmed. No costs. E

VS

Appeals dismissed.