SUPREME COURT OF INDIA

NOOR NIWAS NURSERY PUBLIC SCHOOL

Vs.

REGIONAL PROVIDENT FUND COMMR. & ORS.

08/12/2000

(S.R.Babu, S.N.Vaariava)

Appeal (civil) 3320 1997

JUDGMENT

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 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.

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. 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.

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.

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