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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 29.08.2025

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Judgment delivered on: 04.11.2025

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W.P.(C) 2941/2012

SPICE JET LTD

.....Petitioner

Through: Mr. Atul Sharma, Ms.Abhilasha
Sharma and Mr. Dipan Sethi, Advs.

versus

UNION OF INDIA AND ANR

.....Respondents

Through: Ms.Manisha Agrawal Narain, CGSC
with Mr.Nipun Jain and Ms.Ananya
Arora, Advs.
Mr.Siddharth, SC for EPFO with
Mr.Amit Kumar, Mr.Prateek Goyal
and Mr.Harshit Manwani, Advs for
R-2.

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W.P.(C) 6330/2021 & CM APPL. 19949/2021

LG ELECTRONIC INDIA PRIVATE LIMITED

.....Petitioner

Through: Mr.Sudhir Nandrajog, Sr.Adv with
Mr.Rishi Awasthi, Mr.Amit Awasthi
and Mr.Piyush Vatsa, Advs.

versus

UNION OF INDIA AND OTHER

.....Respondents

Through: Mr.Vikram Jetly, CGSC with
Ms.Shreya Jetly, Adv for R-1.



Mr.Siddharth, SC for EPFO with Mr.Amit Kumar, Mr.Prateek Goyal and Mr.Harshit Manwani, Advs for R-2 to 4.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

J U D G M E N T

DEVENDRA KUMAR UPADHYAYA, C.J.

1. Since common questions of law have been raised in these writ petitions and facts are also intertwined, both the petitions were heard together and are being decided by the following common judgment and order;

W.P.(C) 2941/2012

C H A L L E N G E

2. Proceedings of this petition have been instituted under Article 226 of the Constitution of India seeking the following prayers: -

"It is therefore, most respectfully prayed that this Hon'ble Court may be pleased to:

a) issue a writ, order or direction in the nature of writ of certiorari or any other appropriate writ, order or direction in the nature thereof quashing the Notification bearing number GSR 706(E) dated 1 st October, 2008 and Notification bearing number GSR 148 dated 3 rd September, 2010 issued by the Respondent No.1;

b) issue a writ, order or direction in the nature of writ of certiorari or any other appropriate writ, order or direction in the nature thereof quashing the Demand Notice dated 14.03.2011 bearing Ref No. HR/GGN/RO/INT/Squad/3 and the Letter dated 13.12.2011 bearing Ref No. E/DL/15805/COMP-I/11299 issued by the Respondent No.2 to the Petitioner;

W.P.(C) 2941/2012 & W.P.(C) 6330/2021

Page 2 of 47



c) issue a writ, order or direction in the nature of writ of certiorari or any other appropriate writ, order or direction in the nature thereof quashing the Summoning Order dated 15.03.2012 bearing Ref No. E/DL/15805/C-1/2358 issued by the Respondent No.2 to the Petitioner;

d) pass such other and further order/orders as may be deemed fit and proper in the facts and circumstances of the present case.”

3. By the notification dated 01.10.2008 issued under Section 5 read with Section 7(1) of the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as “**the Act**”), the Central Government has inserted paragraph 83 in the Employees’ Provident Fund Scheme, 1952 (hereinafter referred to as “**the Scheme**”), whereby the Scheme has been made applicable to the ‘International Workers’ subject to certain modifications in the said Scheme. Paragraph 83 of the Scheme as inserted *vide* impugned notification dated 01.10.2008 (w.e.f. 01.10.2008) is as under:

“83. Special provision in respect of International Workers – *The Scheme shall, in its application to International Workers as defined in clause (ff) of paragraph 2 of this scheme be subject to the following modifications, namely:-*

(1) For clause (f) of paragraph 2, the following clauses shall be substituted, namely:-

(f) "excluded employee" means an International Workers, who is contributing to a social security programme of his/her country of origin, either as a citizen or resident, with whom India has entered into a social security agreement on reciprocity basis and enjoying the status of detached worker for the period and terms, as specified in such an agreement;

(ff) "International Worker" means,-

(a) an Indian employee having worked or going to work in a foreign country with which India has entered into a social security agreement and being eligible to avail the benefits under a social security



programme of that country, by virtue of the eligibility gained or going to gain, under the said agreement;

(b) an employee other than an Indian employee, holding other than an Indian passport, working for an establishment in India to which the Act applies;

(2) For the paragraphs 26, 26A and 26B, the following paragraphs shall be substituted namely:-

26. Class of employees of International Workers entitled and required to join the Fund. –(1)(a) Every International Worker of an establishment to whom this scheme applies, other than an excluded employee, shall be entitled and required to become a member of the Fund from the beginning of the month following that in which this paragraphs comes into force.

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

(2) Where the Scheme applies to an establishment on the expiry or cancellation of an order of exemption under section 17 of the Act, every International Worker who, but for the exemption would have become and continued as a member of the Fund shall become a member of the Fund forthwith.

(3) After this paragraph comes into force in an establishment, every International Worker, thereof, other than an excluded employee be entitled and required to become a member from the beginning of the month.

(4) An excluded employee of an establishment to which this Scheme applies shall, on ceasing to be such an employee be entitled and required to become a member of the Fund from the beginning of the month following that on which he ceases to be such employee.

(5) On re-election of a class of International Workers exempted under paragraph 27A to join the Fund or on the expiry or cancellation of an order under that paragraph, every International Worker, who but for such exemption would have become and continued as a member of the Fund, shall forthwith become a member thereof.



(6) Every International Worker who is a member of a private provident fund maintained in respect of an exempted establishment and who, but for the exemption, would have become and continued as a member of the Fund shall, on joining an establishment to which this Scheme applies, become a member of the Fund forthwith

26A. Retention of membership.—A member of the Fund shall continue to be a member until he withdraws under paragraph 69 the amount standing to his credit in the Fund or is covered by a notification of exemption under section 17 of the Act or an order of exemption under paragraph 27 or 27A or the benefits are settled in terms of the relevant provisions under the social security agreement entered into between India and his country of origin.

Explanation.— In the case of a claim for refund by a member under sub-paragraph (2) of paragraph 69, the membership of the Fund shall be deemed to have been terminated from the date the payment is authorised to him by the authority specified in this behalf by the Commissioner irrespective of the date of claim.

26B. Resolution of doubts.—If any question arises as to whether an International Worker is entitled or required to become or continue as member, or as to the date from which he is entitled or required to become a member, the decision, thereon of the Regional Commissioner shall be final:

Provided that no decision shall be given unless both the employer and the International Worker have been given an opportunity of being heard.

(2) For paragraph 36, the following paragraphs shall be substituted, namely:—

36. Duties of employers.—(1) Every employer shall send to the Commissioner, with fifteen days of the commencement of this Scheme, a consolidated return in such form as the Commissioner may specify, of the International Workers (indicating distinctly the nationality of each and every International Worker) required or entitled to become a member of the Fund showing the basic wage, retaining allowance (if any) and dearness allowance including the cash value of any food concession paid to each of such International Worker:

Provided that if there is no International Worker who is required or entitled to become a member of the Fund, the employer shall send a 'NIL' return.



(2) Every employer shall send to the Commissioner within fifteen days of the close of each month a return-

(a) in Form 5, of the International Workers qualifying to become members of the Fund for first time during the preceding month together with the declaration in Form 2 furnished by such qualifying International Workers nationality of each and every international Workers (indicating distinctly the nationality of each and every International Worker)

(b) in such form as the Commissioner may specify, of the International Workers (indicating distinctly the nationality of each and every International Worker) leaving service of the employer during the preceding months:

Provided that if there is no International Worker qualifying to become a member of the Fund for the first time or there is no International Worker leaving service of the employer during the preceding months, the employer shall send a 'NIL' return.”.

4. Vide impugned notification dated 03.09.2010, paragraph 83 as inserted vide notification dated 01.10.2008 was substituted and the substituted paragraph 83 reads as under:

“83. Special provision in respect of International Workers.—The Scheme, shall, in its application to International Workers as defined in this paragraph, be subject to the following modifications, namely—

(1) For clause (f) of Paragraph 2, the following clause shall be substituted, namely—

[(f) “excluded employee” means,—

(i) an International Worker, who is contributing to a social security programme of his country of origin, either as a citizen or resident, with whom India has entered into a social security agreement on reciprocity basis and enjoying the status of detached worker for the period and terms, as specified in such an agreement; or

(ii) an International Worker, who is contributing to a social security programme of his country of origin, either as a citizen or resident, with whom India has entered into a bilateral comprehensive economic agreement containing a clause on social security prior to 1st October, 2008, which specifically exempts natural persons of either country to contribute to the social security fund of the host country;]



(2) After clause (j) of Paragraph 2, the following clause shall be substituted, namely—

‘(ja) “International Worker” means,—

- (a) an Indian employee having worked or going to work in a foreign country with which India has entered into a social security agreement and being eligible to avail the benefits under a social security programme of that country, by virtue of the eligibility gained or going to gain, under the said agreement;
- (b) an employee other than an Indian employee, holding other than an Indian passport, working for an establishment in India to which the Act applies:

[Provided that the worker who is a Nepalese national on account of Treaty of Peace and Friendship of 1950 and the worker who is a Bhutanese national on account of India-Bhutan Friendship Treaty of 2007, shall be deemed to be an Indian worker;]

(3) For Paragraphs 26, 26-A and 26-B, the following paragraphs shall be substituted, namely—

“26. Class of International Workers entitled and required to join the Fund.—(1)(a) Every International Worker (other than an excluded employee), employed as on 1st day of October, 2008, in an establishment to which this Scheme applies, shall be entitled and required to become a member of the Fund with effect from the 1st day of November, 2008.

(2) Every International Worker (other than an excluded employee), employed after the 1st day of October, 2008 in an establishment to which this Scheme applies, who has not become a member already shall be entitled and required to become a member of the Fund from the date of his joining the establishment.

(3) Where the Scheme applies to an establishment on the expiry or cancellation of an order of exemption under Section 17 of the Act, every International Worker who, but for the exemption would have become and continued as a member of the Fund shall become a member of the Fund forthwith.

(4) An excluded employee of an establishment to which this scheme applies shall, on ceasing to be such an employee, be entitled and required to become a member of the Fund from the date he ceases to be such employee.

(5) On re-election of a class of International Workers exempted under Paragraph 27-A to join the Fund or on the expiry or cancellation of an



order under that paragraph, every International Worker, who but for such exemption would have become and continued as a member of the Fund, shall forthwith become a member thereof.

(6) Every International Worker who is a member of a private provident fund maintained in respect of an exempted establishment and who, but for the exemption, would have become and continued as a member of the Fund shall, on joining an establishment to which this Scheme applies, become a member of the Fund forthwith.

26-A. Retention of membership.—A member of the Fund shall continue to be a member until he withdraws under Paragraph 69 the amount standing to his credit in the Fund or is covered by a notification of exemption under Section 17 of the Act or an order of exemption under Paragraph 27 or 27-A or the benefits are settled in terms of the relevant provisions under the social security agreement entered into between India and his country of origin.

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

Provided that both the employer and the International Worker shall be heard before passing any order in the matter and such hearing, if any, shall be in India.]

(4) In Paragraph 29, in sub-paragraph (1), after the points, the following proviso shall be inserted, namely—

“Provided further that where wages are paid in a currency other than in the Indian Rupee, the rate of conversion of that currency shall be the telegraphic transfer buying rate offered by the State Bank of India established under the State Bank of India Act, 1955 (23 of 1955) for buying such currency on the last working of the month for which the wages are due.”.

(5) For Paragraph 36, the following paragraph shall be substituted, namely—

“36. Duties of employer.—(1) Every employer of an establishment to which this Scheme applies shall send to the Commissioner within fifteen days from the application of the Scheme to such establishment, a consolidated return in such form as the Commissioner may specify, of the International Workers (indicating distinctly the nationality of each and every International Worker) required or entitled to become members of the



Fund showing the basic wage, retaining allowance (if any) and dearness allowance including the cash value of any food concession paid to each of such International Worker:

Provided that if there is no International Worker who is required or entitled to become a member of the Fund, the employer shall send a 'NIL' return.

(2) Every employer shall send to the Commissioner, within fifteen days of the close of each month, a return—

(a) in Form 5 of the International Workers qualifying to become members of the Fund for the first time during the preceding month together with the declarations in Form 2 furnished by such qualifying International Workers (indicating distinctly the nationality of each and every International Worker), and

(b) in such form as the Commissioner may specify, of the International Workers (indicating distinctly the nationality of each and every International Worker) leaving service of the employer during the preceding month:

Provided that if there is no International Worker qualifying to become a member of the Fund for the first time or there is no International Worker leaving service of the employer during the preceding month, the employer shall send a 'NIL' return.”:

[Provided further that a copy of the forms as mentioned in clauses (a) and (b) above shall be provided by the employer to concerned employees immediately after joining the service or at the time of leaving the service, as the case may be.]

(6) For Paragraph 69, the following paragraph shall be substituted, namely—

“69. Circumstances in which accumulations in the Fund are payable to an International Worker.—*(1) An International Worker may withdraw the full amount standing to his credit in the Fund—*

(a) on retirement from service in the establishment at any time after the attainment of 58 years;

(b) on retirement on account of permanent and total incapacity for work due to bodily or mental infirmity duly certified by the medical officer of the establishment, or where an establishment has no regular medical officer, by a registered medical practitioner designated by the establishment:

Provided that—



- (i) where an establishment has been closed, the certificate of any registered medical practitioner may be accepted;
- (ii) where the establishment is covered by the Employees' State Insurance Scheme, medical certificate from a medical officer of the Employees' State Insurance Dispensary with which or from the Insurance Medical Practitioner with whom the employee is registered under the Scheme, shall be produced;
- (iii) where by mutual agreement of employers and employees, a Medical Board exists for any establishment or a group of establishments, a certificate issued by such Medical Board may also be accepted for the purposes of this sub-paragraph.

(2) It shall be open to the Regional Commissioner to demand from the member a fresh certificate from a Civil Surgeon or any doctor acting on his behalf where the original certificate produced by him under clause (b) of sub-paragraph (1) gives rise to suspicion regarding its genuineness:

Provided that the entire fee of the Civil Surgeon or any doctor acting in his behalf shall be paid from the Fund in case the findings of the Civil Surgeon or any doctor acting on his behalf agree with the original certificate, and that where such doctor acting in his behalf agree with the original certificate, and that where such findings do not agree with the original certificate, only half of the fee shall be paid from the Fund and the remaining half shall be debited to the member's account.

(3) A member suffering from tuberculosis or leprosy or cancer, even if contracted after leaving the service of an establishment on grounds of illness but before payment has been authorised, shall be deemed to have been permanently and totally incapacitated for work.

[(4) In respect of a member covered under social security agreement entered into between Government of India and any other country, on ceasing to be an employee in an establishment covered under the Act.]”.

(7) For Paragraph 72, the following paragraph shall be substituted, namely—

“72. Payment of Provident Fund.—(1) When the amount standing to the credit of a member becomes payable, it shall be the duty of the Commissioner to make prompt payment as provident in the Scheme.

[(2) The due amount in respect of the member shall be payable in the payees' bank account directly or through the employer.]

(3) In all the other cases, the amount due shall be payable to the credit of the payee's bank account in India.”.

(8) After Paragraph 78, the following paragraph shall be inserted, namely—



“78-A. Performing certain special functions under social security agreements.—The Commissioner shall perform all such functions as are assigned to the Employees' Provident Fund EPFO under a social security agreement entered into between by the Government of India and any other country, in the manner and as per the terms specified therein.”.]”

5. These are the two notifications dated 01.10.2008 and 03.09.2010, which have been put to challenge in this petition. These notifications provide that the Scheme shall apply to ‘International Workers’ with certain modifications as given in these notifications. By inserting paragraph 83 in the Scheme, special provisions have been made in respect of ‘International Workers’. As a result of insertion of paragraph 83, the term ‘Excluded Employee’ in respect of ‘International Workers’ has been defined to mean an employee who is contributing to Social Security Programme of his country of origin either as citizen or resident with whom India has entered into a Social Security Agreement (SSA) on reciprocal basis and is enjoying the status of detached worker. The period in terms specified in such agreement ‘International Worker’ also means an Indian employee who has worked or is going to work in a foreign country with which India has entered into an SSA and are eligible to avail the benefits under Social Security Programme of that country by virtue of the eligibility as given or going to be given under the said agreement. The term ‘International Worker’ also includes an employee other than an Indian employee working for an establishment in India to which the Act applies. On account of the insertion of paragraph 83, every ‘International Worker’ of an Indian establishment to which the Scheme applies, other than excluded employees, is entitled and required to become a member of the Fund, which in terms of Section 2(h) means the provident fund established under a Scheme.



6. In terms of paragraph 83 of the Scheme as substituted *vide* impugned notification dated 03.09.2010, every 'International Worker' other than an Excluded Employee, employed in an establishment on 01.10.2008, shall be entitled and required to become a member of the Fund with effect from 01.10.2008. The substituted paragraph 83 further provides that an 'International Worker' employed after 01.10.2008 who had not become a member already of the Fund, shall be entitled and required to become a member of the Fund from the date such an 'International Worker' joins the establishment.

7. Paragraph 36 which was substituted by insertion of substituted paragraph 83 *vide* notification dated 03.09.2010 casts a duty on every employer to send to the Commissioner for Employees Provident Fund a consolidated return in such form as the Commissioner may specify in respect of the 'International Workers' who are required or entitled to become members of the Fund depicting certain information regarding basic wage, retaining allowance and dearness allowance etc. The employer has also been required to send to the Commissioner every month a return in Form 5 of the 'International Workers' qualifying to become members of the Fund for the first time.

8. Substituted paragraph 69, which is applicable to 'International Workers' on insertion of paragraph 83 in the Scheme *vide* notification dated 03.09.2010, permits an 'International Worker' to withdraw the full amount standing to his credit in the Fund on his retirement from service at any time



after attainment of 58 years of age and also on account of permanent and total incapacity for work due to some infirmity.

9. Apart from challenging the aforesaid two notifications whereby paragraph 83 was first inserted in the year 2008 and thereafter substituted in the year 2010, the petitioner which is an airline service provider engaged in air transport services in India has also challenged the letter dated 14.03.2011 issued by the Employees' Provident Fund Organization (EPFO) whereby the petitioner has been directed to deposit the Provident Fund and other dues in respect of 'International Workers'. The petitioner also challenges the summons dated 15.03.2012 issued by EPFO to the petitioner, requiring the petitioner to appear to give evidence and produce all the relevant records for determination of PF and related dues payable by the petitioner in respect of 'International Workers' employed by it. The said summons have been issued by the Regional Provident Fund Commissioner under Section 7A of the Act.

SCHEME OF THE ACT

10. The Act was enacted by the Parliament in the year 1952 with a view to provide for a statutory framework containing certain social security measures by compulsory institution of contributory provident funds in which both the worker and the employer would contribute. Accordingly, the Act provides for institution of Contributory Provident Funds for factories and establishments as specified in Schedule I appended to the Act where 20 or more persons are employed or in other establishments employing 20 or more



persons which the Central Government may specify by issuing a notification in the Official Gazette.

11. Section 2(f) defines ‘employee’ to mean a person who is employed for wages in an establishment and who gets his wages directly or indirectly from the employer. Employee also includes a person employed by or through a contractor in or in connection with the establishment or is engaged as an apprentice or under the standing orders of the establishment.

12. Section 2(ff) defines ‘exempted employee’ to mean an employee to whom a Scheme would have applied but for the exemption granted under Section 17.

13. Section 2(l) defines ‘Scheme’ to mean Employees’ Provident Fund Scheme framed under Section 5, whereas ‘Fund’ has been defined under Section 2(h) to mean the Provident Fund established under a Scheme.

14. Section 2(f), 2(ff), 2(h) and 2(l) of the Act are quoted hereunder:

“2. Definitions.—*In this Act, unless the context otherwise requires,—*

(f) “employee” means any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of an establishment, and who gets his wages directly or indirectly from the employer, and includes any person—

(i) employed by or through a contractor in or in connection with the work of the establishment;

(ii) engaged as an apprentice, not being an apprentice engaged under the Apprentices Act, 1961, or under the standing orders of the establishment;



(ff) “*exempted employee*” means an employee to whom a Scheme or the Insurance Scheme, as the case may be would, but for the exemption granted under [* * *] Section 17, have applied;

(h) “*Fund*” means the provident fund established under a Scheme;

(l) “*Scheme*” means the Employees’ Provident Funds Scheme framed under Section 5;”

15. Section 5 provides that the Central Government may frame a Scheme which shall be called the Employees’ Provident Fund Scheme for the establishment of provident funds under the Act for employees or any class of employees. The Central Government under the said provision is also empowered to specify the establishment or class of establishment to which the Scheme shall apply. It also mandates that as soon as the Scheme is framed, a Fund shall be established in accordance with the provisions of the Act and the Scheme, which is to be administered by the Central Board constituted under Section 5A. Section 5 of the Act reads as under:

“5. Employees’ Provident Fund Schemes.— (1) *The Central Government may, by notification in the Official Gazette, frame a Scheme to be called the Employees’ Provident Fund Scheme for the establishment of provident funds under this Act for employees or for any class of employees and specify the establishments or class of establishments to which the said Scheme shall apply and there shall be established, as soon as may be after the framing of the Scheme, a Fund in accordance with the provisions of this Act and the Scheme.*

(1-A) *The Fund shall vest in, and be administered by, the Central Board constituted under Section 5-A.*

(1-B) *Subject to the provisions of this Act, a Scheme framed under sub-section (1) may provide for all or any of the matters specified in Schedule II.*

(2) *A Scheme framed under sub-section (1) may provide that any of its provisions shall take effect either prospectively or retrospectively on such date as may be specified in this behalf in the Scheme.”*



16. Section 6 of the Act provides that contribution to be paid by the employer to the Fund shall be 10 per cent of the basic wages payable to each of the employees whether employed directly or through a contractor. It further provides that employees' contribution shall be equal to the contribution payable by the employer, which may be an amount exceeding 10 per cent if any employee so desires. Section 6 further provides that in a situation wherein an employee desires to contribute an amount exceeding 10 per cent of his basic wages, the employer shall not be under an obligation to pay any contribution over and above his contribution payable, i.e. 10 per cent of the basic wages. Section 6 of the Act reads as under:

"6. Contributions and matters which may be provided for in Schemes.—[* * *] The contribution which shall be paid by the employer to the Fund shall be ten per cent of the basic wages, dearness allowance and retaining allowance (if any), for the time being payable to each of the employees (whether employed by him directly or by or through a contractor), and the employee's contribution shall be equal to the contribution payable by the employer in respect of him and may, if any employee so desires, be an amount exceeding ten per cent of his basic wages, dearness allowance and retaining allowance (if any), subject to the condition that the employer shall not be under an obligation to pay any contribution over and above his contribution payable under this section:

Provided that in its application to any establishment or class of establishments which the Central Government, after making such enquiry as it deems fit, may, by notification in the Official Gazette specify, this section shall be subject to the modification that for the words ten per cent, at both the places where they occur, the words twelve per cent shall be substituted :

Provided further that where the amount of any contribution payable under this Act involves a fraction of a rupee, the Scheme may provide for the rounding off of such fraction to the nearest rupee, half of a rupee or quarter of a rupee.

Explanation.— [1] For the purposes of this section dearness allowance shall be deemed to include also the cash value of any food concession allowed to the employee.



Explanation 2.—For the purposes of this section “retaining allowance” means an allowance payable for the time being to an employee of any factory or other establishment during any period in which the establishment is not working, for retaining his services.

[* * *] ”

17. Section 7 provides that the Central Government may by notification in the Official Gazette amend or vary or add to the Scheme either prospectively or retrospectively. However, any notification issued under Section 7(1) is required to be laid before both the Houses of Parliament, and if both the Houses agree to make any modification in the notification, or both the Houses agree that the notification should not be issued, the notification shall have effect only in such modified form or that shall be of no effect as the case may be. Section 7 of the Act is extracted hereunder:

“7. Modification of Scheme.—(1) *The Central Government may, by notification in the Official Gazette, add to, [amend or vary, either prospectively or retrospectively, the Scheme, the Pension Scheme or the Insurance Scheme, as the case may be.*

(2) *Every notification issued under sub-section (1) shall be laid, as soon as may be after it is issued, before each House of Parliament while it is in session, for a total period of thirty days, which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the notification, or both Houses agree that the notification should not be issued, the notification shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification.”*

18. As per Section 7A of the Act various officers of the Central Provident Fund Organization have been given the power to decide a dispute if such dispute arises regarding applicability of the Act to an establishment. These officers have also been given power to determine the amount due from any



employer under the provisions of the Act or the Scheme framed thereunder and for the said purpose such officers are also permitted to conduct such inquiry as may be deemed necessary. Section 7A of the Act is also extracted hereinbelow:

“7-A. Determination of moneys due from employers.— (1) The Central Provident Fund Commissioner, any Additional Central Provident Fund Commissioner, any Deputy Provident Fund Commissioner, any Regional Provident Fund Commissioner or any Assistant Provident Fund Commissioner may, by order,—

(a) in a case where a dispute arises regarding the applicability of this Act to an establishment, decide such dispute; and

(b) determine the amount due from any employer under any provision of this Act, the Scheme or the Pension Scheme or the Insurance Scheme, as the case may be,

and for any of the aforesaid purposes may conduct such inquiry as he may deem necessary.

(2) The officer conducting the inquiry under sub-section (1) shall, for the purposes of such inquiry, have the same powers as are vested in a court under the Code of Civil Procedure, 1908, for trying a suit in respect of the following matters, namely:—

(a) enforcing the attendance of any person or examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavit;

(d) issuing commissions for the examination of witnesses;

and any such inquiry shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228, and for the purpose of Section 196 of the Indian Penal Code.

(3) No order [* * *] shall be made under sub-section (1), unless [the employer concerned] is given a reasonable opportunity of representing his case.

(3-A) Where the employer, employee or any other person required to attend the inquiry under sub-section (1) fails to attend such inquiry without assigning any valid reason or fails to produce any document or to file any report or return when called upon to do so, the officer conducting the inquiry may decide the applicability of the Act or determine the amount due from any



employer, as the case may be, on the basis of the evidence adduced during such inquiry and other documents available on record.

(4) Where an order under sub-section (1) is passed against an employer ex parte, he may, within three months from the date of communication of such order, apply to the officer for setting aside such order and if he satisfies the officer that the show-cause notice was not duly served or that he was prevented by any sufficient cause from appearing when the inquiry was held, the officer shall make an order setting aside his earlier order and shall appoint a date for proceeding with the inquiry:

Provided that no such order shall be set aside merely on the ground that there has been irregularity in the service of the show-cause notice if the officer is satisfied that the employer had notice of the date of hearing and had sufficient time to appear before the officer.

Explanation.—Where an appeal has been preferred under this Act against an order passed ex parte and such appeal has been disposed of otherwise than on the ground that the appellant has withdrawn the appeal, no application shall lie under this sub-section for setting aside the ex parte order.

(5) No order passed under this section shall be set aside on any application under sub-section (4) unless notice thereof has been served on the opposite party.”

SALIENT FEATURES OF EMPLOYEES’ PROVIDENT FUND SCHEME, 1952, WHICH ARE RELEVANT FOR THE PURPOSES OF ADJUDICATION OF THE ISSUES RAISED.

19. The Central Government, in exercise of its powers conferred under Section 5 of the Act, has framed the Employees’ Provident Fund Scheme, 1952.

20. The Scheme applies to all factories and other establishments to which the Act has been made applicable subject, however, to the provisions of Section 16 and 17 of the Act. Paragraph 2 of the Scheme contains the definition clause, paragraph 2(f), whereof defines ‘excluded employee’ to mean an employee who has been a member of the Fund, and has withdrawn



the full amount as to his accumulations in the Fund under paragraph 69 of the Scheme. 'Excluded Employee' also means an employee whose pay at the time when he is entitled to become a member of the Fund exceeds Rs. 15,000/- per month. Paragraph 2(f) of the Scheme is quoted hereunder:

"2. Definitions.- *In this Scheme, unless the context otherwise requires.-*

.....

(f) *"excluded employee" means—*

(i) an employee who, having been a Member of the Fund, withdrew the full amount of his accumulations in the Fund under clause (a) or (c) of sub-paragraph (1) of Paragraph 69;

(ii) an employee whose pay at the time he is otherwise entitled to become a Member of the Fund, exceeds fifteen thousand rupees per month;

Explanation.—"Pay" includes basic wages with dearness allowance, retaining allowance (if any) and cash value of food concessions admissible thereon;

[* *]*

(iv) an apprentice;

Explanation.—An apprentice means a person who, according to the certified standing orders applicable to the factory or establishment, is an apprentice, or who is declared to be an apprentice by the authority specified in this behalf by the appropriate."

21. Paragraph 26 of the Scheme provides that every employee working in a factory or any establishment, other than an excluded employee, will be entitled and required to become a member of the Fund.

22. Paragraph 26A prescribes that a member of the Fund shall continue to be a member until he withdraws the amount standing to his credit in the Fund under paragraph 69 or is covered by a notification of exemption under



Section 17 of the Act or an order of exemption passed under paragraph 27 or paragraph 27A. Paragraph 26 and Paragraph 26A of the Scheme reads as under:

“26. Classes of employees entitled and required to join the Fund.—(1)(a)

Every employee employed in or in connection with the work of a factory or other establishment to which this Scheme applies, other than an excluded employee, shall be entitled and required to become a Member of the Fund from the day this paragraph comes into force in such factory or other establishment.

(b) Every employee employed in or in connection with the work of a factory or other establishment to which this Scheme applies, other than an excluded employee, shall also be entitled and required to become a Member of the Fund from the day this paragraph comes into force in such factory or other establishment if on the date of such coming into force, such employee is a subscriber to a provident fund maintained in respect of the factory or other establishment or in respect of any other factory or establishment (to which the Act applies) under the same employer:

Provided that where the Scheme applies to a factory or other establishment on the expiry or cancellation of an order of exemption under Section 17 of the Act, every employee who but for the exemption would have become and continued as a Member of the Fund, shall become a Member of the Fund forthwith.

(2) After this paragraph comes into force in a factory or other establishment, every employee employed in or in connection with the work of that factory or establishment, other than an excluded employee, who has not become a Member already shall also be entitled and required to become a Member of the Fund from the date of joining the factory or establishment.

(3) An excluded employee employed in or in connection with the work of a factory or other establishment to which this scheme applies shall, on ceasing to be such an employee, be entitled and required to become a Member of the Fund from the date he ceased to be such employee.

(4) On re-election of an employee or a class of employees exempted under Paragraph 27 or Paragraph 27-A to join the Fund or on the expiry or cancellation of an order under that paragraph, every employee, shall forthwith become a Member thereof.



(5) Every employee who is a Member of a private provident fund maintained in respect of an exempted factory or other establishment and who but for exemption would have become and continued as a Member of the Fund shall, on joining a factory or other establishment to which this scheme applies, become a Member of the Fund forthwith.

(6) Notwithstanding anything contained in this paragraph an officer not below the rank of an Assistant Provident Fund Commissioner may, on the joint request in writing of any employee of a factory or other establishment to which this Scheme applies and his employer, enrol such employee as a Member or allow him to contribute on more than fifteen thousand rupees of his pay per month if he is already a Member of the Fund and thereupon such employee shall be entitled to the benefits and shall be subject to the conditions of the Fund, provided that the employer gives an undertaking in writing that he shall pay the administrative charges payable and shall comply with all statutory provisions in respect of such employee.”

“26-A. Retention of membership.—(1) A Member of the Fund shall continue to be a Member until he withdraws under Paragraph 69 the amount standing to his credit in the Fund or is covered by a notification of exemption under Section 17 of the Act or an order of exemption under Paragraph 27 or Paragraph 27-A.

Explanation.— [* * *]

(2) Every Member employed as an employee other than an excluded employee, in a factory or other establishment to which the Scheme applies, shall contribute to the Fund, and the contribution shall also be payable to the Fund in respect of him by the employer. Such contribution shall be in accordance with the rate specified in Paragraph 29:

Provided that subject to the provisions contained in sub-paragraph (6) of Paragraph 26 and in Paragraph 27, or sub-paragraph (1) of Paragraph 27-A, where the monthly pay of such a Member exceeds fifteen thousand rupees, the contribution payable by him, and in respect of him by the employer, shall be limited to the amounts payable on a monthly pay of fifteen thousand rupees including dearness allowance, retaining allowance (if any) and cash value of food concession.”

23. The provisions relating to withdrawal of the amount standing to the credit of an employee in the Fund is provided in paragraph 69, according to which, the full amount may be withdrawn on retirement from service after attaining the age of 55 years or on retirement on account of permanent and



total incapacity for work due to bodily or mental infirmity or before migration from India for permanent settlement abroad or for taking employment abroad or in case of termination of service in the case of mass or individual retrenchment or termination of service of an employee under voluntary retirement scheme. The withdrawal of the full amount is also permissible where a factory or other establishment is closed and also in a situation where a member of the Fund is transferred from a covered factory or other establishment to another factory or other establishment not covered under the Act but which is under the same employer and also in a situation where a member of the Fund is discharged and is given retrenchment compensation in terms of the provisions of Industrial Disputes Act, 1947. Paragraph 69 of the Scheme is extracted hereunder:

“69. Circumstances in which accumulations in the Fund are payable to a member.—(1) A member may withdraw the full amount standing to his credit in the fund –

(a) on retirement from service after attaining the age of [55 years]:

[Provided that a member, who has not attained the age of [55 years] at the time of termination of his service, shall also be entitled to withdraw the full amount standing to his credit in the Fund if he attains the age of [55 years] before the payment is authorised;]

[(b) on retirement on account of permanent and total incapacity for work due to bodily or mental infirmity duly certified by the medical officer of the establishment or where an establishment has no regular medical officer, by a registered medical practitioner designated by the establishment;]

(c) immediately before migration from India for permanent settlement abroad for [or for taking employment abroad];

*[***]*

[(dd) on termination of service under a voluntary scheme of retirement framed by the employer and the employees under a mutual agreement specifying, inter alia, that notwithstanding the provisions contained in sub-



clause (a) of clause (oo) of section 2 of the Industrial Disputes Act, 1947, excluding voluntary retirement from the scope of definition of "retrenchment" such voluntary retirements shall for the purpose be treated as retrenchments by mutual consent of the parties;]

[(e)in any of the following contingencies, provided the actual payment shall be made only after completing a continuous period of not less than two months immediately preceding the date on which a member makes the application for withdrawal:—

(i) where a factory or other establishment is closed but certain employees who are not retrenched, are transferred by the employer to other factory or establishment, not covered under the Act;

(ii) where a member is transferred from a covered factory or other establishment to another factory or other establishment not covered under the Act, but is under the same employer; and

(iii) where a member is discharged and is given retrenchment compensation under the Industrial Disputes Act, 1947 (14 of 1947;)]

*[***]*

[(1A) For the purpose of clause (b) of sub-paragraph (1) –

where an establishment has been closed, the certificate of any registered medical practitioner may be accepted;

(i) where there is no medical officer in the establishment, the employer shall designate a registered medical practitioner stationed in the vicinity of the establishment; or

(ii) where the establishment is covered by the Employees' State Insurance Scheme, medical certificate from a medical officer of the Employees' State Insurance Dispensary with which or from the Insurance Medical Practitioner with whom, the employee is registered under that scheme, shall be produced:

Provided that whereby mutual agreement of employers and employees, a Medical Board exists for any establishment or a group of establishments, certificate issued by such Medical Board may also be accepted for the purpose of this paragraph:

Provided further that it shall be open to the Regional Commissioner to demand from the member a fresh certificate from a Civil Surgeon or any doctor acting on his behalf where the original certificate produced by him gives rise to suspicion regarding its genuineness:

Provided further the entire fee of the Civil Surgeon or any doctor acting in his behalf shall be paid from the Fund in case the findings of the Civil



Surgeon or any doctor acting on his behalf agree with the original certificate and that where such findings do not agree with the original certificate, only half of the fee shall be paid from the Fund and the remaining half shall be debited to the member's account;

(iii) A member suffering from tuberculosis or leprosy [or cancer], even if contracted after leaving the service of an establishment on grounds of illness but before payment has been authorised, shall be deemed to have been permanently and totally incapacitated for work.]

(2)] In cases other than those specified in sub-paragraph (1), the Central Board, or where so authorised by the Central Board, the Commissioner or where so authorised by the Commissioner, any officer subordinate to him, may permit a member to withdraw the full amount standing to his credit in the fund on ceasing to be an employee in any establishment to which the Act applies provided that he has not been employed in any factory or other establishment to which the Act applies for a continuous period of not less than two months immediately preceding the date on which he makes an application for withdrawal. The requirement of two months waiting period shall not, however, apply in cases of female members resigning from the service of the establishment for the purpose of getting married.]

*[***]*

*[***]*

[(5) Any member who withdraws the amount due to him under sub-paragraph (2) shall, on obtaining re-employment in a factory or other establishment to which the scheme applies, be required to qualify or again for the membership of the Fund and on qualifying for membership shall be treated as a fresh member thereof.] ”

24. It is noteworthy that prior to insertion of paragraph 83 *vide* notification dated 01.10.2008, which now stands substituted *vide* notification dated 03.09.2010, there were no separate provisions for ‘International Workers’, however, the scheme operated somewhat in a different manner in case of newspaper establishment and newspaper employees as per paragraph 80 which was inserted by the Central Government in the Scheme *vide* notification dated 04.12.1956. The Scheme also operated differently in case of cine-workers as per paragraph 81 which was inserted by the Central Government in the Scheme *vide* notification dated 24.08.1987. It is also



worth noticing that the Scheme was made applicable in a different manner in respect of employees who are persons with disability under the Persons with Disabilities (Equal Opportunities, Protection of Right and Full Participation) Act, 1995 and under the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999. Thus, it is not for the first time that the application of the Scheme has been made differently for 'International Workers' alone by insertion and substitution of paragraph 83 *vide* impugned notifications dated 01.10.2008 and 03.09.2010 respectively; rather by inserting paragraph 80, 81 and 82 in the years 1956, 1987 and 2008 respectively, the Scheme has been made applicable differently in case of specified employees employed in newspaper establishment or who are cine-workers or who are persons with disability.

25. By insertion and later on substitution of paragraph 83, the Scheme in respect of 'International Workers' is to be applied with certain modifications given in paragraph 83. For 'International Workers', paragraph 2(f) of the Principal Scheme has been substituted and substituted paragraph 2(f) defines 'Excluding Employees' which are of two types – (1) an International Worker who is contributing to Social Security Programme of his country with whom India has entered into an SSA on reciprocal basis and is enjoying the status of detached worker for the period and terms as specified in SSA; and (2) an 'International Worker' who is contributing to a social security scheme with whom India has entered into a bilateral comprehensive economic agreement containing a clause on social security prior to 01.10.2008 which exempts natural persons of either country to contribute to the social security fund of the host country. Substituted Clause 2(ja) as per



paragraph 83 defines ‘International Worker’ of two types, (1) an Indian employee who has worked or going to work in a foreign country with which India has entered into a SSA and is eligible to avail the benefits under a Social Security Programme of that country; and (2) an employee other than an Indian employee holding other than an Indian passport who is working for an establishment in India to which the Act applies. Substituted Clause 2(f) and 2(ja) as per paragraph 83 of the Scheme is as under:

“1) For clause (f) of paragraph 2, the following clause shall be substituted, namely: -

(f)] "excluding employee" means

(i) an international Worker, who is contributed to a social security programme of his country of origin, either as a citizen or resident, with whom India has entered into a social security agreement on reciprocity basis and enjoying the status of detached worker for the period and terms, as specified in such an agreement; or

(ii) an International worker, who is contributing to a social security programme of his country of origin, either as a citizen or resident, with whom India has entered into a bilateral comprehensive economic agreement containing a clause on social security prior to 1st October, 2008, which specifically exempts natural persons of either country to contribute to the social security fund of the host country.]

(2) After clause (i) of paragraph 2, the following clause shall be substituted, namely: –

(ja) "International Worker" means,

(a) an Indian employee having worked or going to work in a foreign country with which India has entered into a social security agreement and being eligible to avail the benefits under a social security programme of that country, by virtue of the eligibility gained or going to gain, under the said agreement;

(b) an employee other than an Indian employee, holding other than an Indian passport, working for an establishment in India to which the Act Applies



[Provided that the worker who is a Nepalese national on account of Treaty of Peace and Friendship of 1950 and the worker who is a Bhutanese national on account of India-Bhutan Friendship Treaty of 2007, shall be deemed to be an Indian worker.]”

26. Accordingly, so far as an international employee other than an Indian employee is concerned who is working for an establishment in India to which the Act applies, he will be required to contribute to the Fund as per the mandate of Section 6 of the Act if such foreign employee belongs to a country which has not entered into a Social Security Agreement on reciprocal basis and with whom India has not entered into a bilateral comprehensive economic agreement.

27. The issue in the petition has been raised in respect of such category of employees who are of foreign origin and with whom India does not have an SSA on a reciprocal basis or with whom India has not entered into a bilateral comprehensive economic agreement.

28. Substituted paragraph 26, as per the impugned notifications, provides that every ‘International Worker’ other than the excluded employee employed in an establishment to which the Scheme applies shall be entitled and required to become a member of the Fund with effect from 01.11.2008. Thus, only those ‘International Workers’ who are excluded employees in terms of the definition of the said term occurring in Clause 2(f) of paragraph 83 are not required to join the Fund. In other words, every ‘International Worker’ other than those who are excluded employees are mandated to join the Fund as per the requirement of substituted paragraph 26, which is applicable in respect of the ‘International employees’ after insertion and



later on substitution of paragraph 83 in the principal scheme. Substituted paragraph 26 in terms of paragraph 83 of the Scheme is quoted hereunder:

“26. Class of International Workers entitled and required to join the Fund.—(1)(a) Every International Worker (other than an excluded employee), employed as on 1st day of October, 2008, in an establishment to which this Scheme applies, shall be entitled and required to become a member of the Fund with effect from the 1st day of November, 2008.

(2) Every International Worker (other than an excluded employee), employed after the 1st day of October, 2008 in an establishment to which this Scheme applies, who has not become a member already shall be entitled and required to become a member of the Fund from the date of his joining the establishment.

(3) Where the Scheme applies to an establishment on the expiry or cancellation of an order of exemption under Section 17 of the Act, every International Worker who, but for the exemption would have become and continued as a member of the Fund shall become a member of the Fund forthwith.

(4) An excluded employee of an establishment to which this scheme applies shall, on ceasing to be such an employee, be entitled and required to become a member of the Fund from the date he ceases to be such employee.

(5) On re-election of a class of International Workers exempted under Paragraph 27-A to join the Fund or on the expiry or cancellation of an order under that paragraph, every International Worker, who but for such exemption would have become and continued as a member of the Fund, shall forthwith become a member thereof.

(6) Every International Worker who is a member of a private provident fund maintained in respect of an exempted establishment and who, but for the exemption, would have become and continued as a member of the Fund shall, on joining an establishment to which this Scheme applies, become a member of the Fund forthwith.”

29. The substituted paragraph 69, which is applicable in respect of ‘International Workers’ permits withdrawal of the full amount standing to their credit in the Fund in certain circumstances, such as on retirement from service in the establishment after attainment of the age of 58 years or on



retirement on account of permanent or total incapacity for work due to bodily or mental infirmity. Paragraph 69 of the Scheme, as applicable in respect of 'International Workers' is part of paragraph 83, which was inserted in the year 2008 and later on substituted in the year 2010. is already quoted above.

SUBMISSIONS ON BEHALF OF THE PETITIONER

30. Challenging the impugned notifications, the main plank of argument made on behalf of the petitioner is that the impugned notifications requiring the 'International Workers', who are not excluded, to become the member of the Fund and accordingly contribute to the Fund, is discriminatory inasmuch as that an Indian employee is required to contribute to the Fund only if he is drawing pay below Rs.15,000/- per month whereas non-excluded International Employees are required to contribute to the Fund irrespective of the quantum of pay being drawn by them.

31. Elaborating further, it has been contended by learned counsel for the petitioner that Section 2(f) of the Act does not distinguish between an Indian employee and a foreign employee, however, such distinction has been sought to be made by introducing paragraph 83 in the Principal Scheme requiring the non-excluded foreign employees to be member of the Fund, thereby, requiring them to contribute to the Fund even if such non-excluded foreign employee draws pay exceeding Rs. 15,000/- per month which creates a separate class that does not have any rational basis. Such classification, according to learned counsel for the petitioner, is not based on



any intelligible differentia, and therefore, is hit by Article 14 of the Constitution of India.

32. Further submission on behalf of the petitioner is that protection of Article 14 of the Constitution of India is available even to non-citizens, and therefore, foreign employees also enjoy the equality before law and equal protection of laws which right, however, is being denied by introduction of paragraph 83 in the Scheme. The submission is that distinction on the ground of nationality is not permissible.

33. It has also been argued by learned counsel appearing for the petitioner that the substituted paragraph 69 which is applicable to foreign employees is unreasonable for the reason that a foreign employee to whom the Act applies is permitted to withdraw the amount standing to his credit in the Fund only on retirement from service in the establishment after he attains the age of 58 years, though such employees come to India for working in an establishment for shorter duration of 2 to 5 years, and therefore, if such employees are permitted to withdraw the amount only after the age of 58 years, the same would be absolutely arbitrary.

34. Another argument raised by learned counsel for the petitioner impeaching the impugned notifications is that a delegated legislation cannot travel beyond the powers delegated. In this regard it has been stated that though Section 2(f) of the Act does not distinguish between International and Indian employees, whereas, paragraph 83 makes a distinction and creates a separate class of non-exempted foreign employees working in an Indian establishment to which the Act applies, and hence, such classification



is not permissible in view of the definition of the phrase ‘Employees’ occurring in Section 2(f) of the Act.

35. It has also been argued on behalf of the petitioner that the impugned notifications has precipitated as a result of colorable exercise of power as the provisions of paragraph 83 introduced by impugned notifications is *ultra vires* the PF Act inasmuch as, Section 2(f) of the Act does not distinguish between domestic and foreign workers whereas paragraph 83 of the Scheme makes such differentiation without any reasonable basis.

36. As far as the challenge to the demand notice dated 14.03.2011 is concerned, the submission made on behalf of the petitioner is that such a demand notice is based on the impugned notifications, and since the notifications are unlawful, the impugned notice also is vitiated.

37. Regarding the summoning order which is also under challenge herein dated 15.03.2012, issued under Section 7A of the Act, it has been stated that any such exercise regarding conducting the inquiry and summoning the petitioner to give evidence and to produce documents for determination under Section 7A is also illegal for the reason that the same is based on the impugned notifications.

38. In respect of his submissions the learned counsel for the petitioner has relied upon a learned Single Judge judgment of Karnataka High Court in ***Stone Hill Education Foundation v. Union of India***, (2024) SCC Online Kar 49 and other connected matters where the High Court struck down paragraph 83 of the Scheme as unconstitutional and arbitrary. Reliance is



also placed on *Union of India & Ors. v. N.S. Rathnam & Sons*, (2015) 10 SCC 681, *Indian Express Newspapers (Bombay) Pvt. Ltd v. Union of India*, (1985) 1SCC 641, *General Officer Commanding-in-Chief v. Dr. Subhash Chandra Yadav*, (1988) 2SCC 351, *State of Karnataka v. H. Ganesh Kamath*, (1983) 2SCC 402.

39. On the aforesaid counts, it has vehemently been urged by learned counsel for the petitioner that the writ petition be allowed and the notifications as also the demand notice and the summoning order be quashed.

SUBMISSIONS ON BEHALF OF THE RESPONDENT

40. Opposing the prayers made in the writ petition, it has been argued on behalf of the respondents that challenge to paragraph 83 does not bear any merit for the reason that ‘International Workers’ are a class apart from the domestic employees as they contribute to the Scheme for their short stay in India unlike domestic employees who contribute throughout their employment, and hence ‘International Workers’ do not suffer economic duress of contributing to the Scheme throughout their service. It has, thus, been argued that for this reason, the argument made by learned counsel for the petitioner that classification is without any reasonable basis, merits rejection.

41. Further submission made on behalf of learned counsel for the respondent is that the Act has been enacted to establish a contributory



provident fund for all the employees in India who do not have old age social security without causing economic duress.

42. It is also the submission on behalf of the respondents that even the foreign employees employed in India have been the members of the Fund since the inception of the Scheme in the year 1952, however, in the year 2008, while issuing the notification, by inserting paragraph 83 in the Scheme, the Central Government recognized that foreigners in India are economically distinct from domestic employees because the foreign employees contribute to the Fund for significantly shorter periods and this short contributory period insulates them from any economic duress.

43. Learned counsel for the respondents has further argued that, in fact, paragraph 83 puts the temporarily employed foreign employees in India at par with Indians temporarily employed in foreign countries with social security agreements, however, application of the scheme to foreign nationals belonging to a country with whom India does not have SSA or a bilateral agreement, has been made mandatory without any cap to the pay drawn by such foreign employees as a social security measure. His submission is that the classification between domestic employees covered under the Act and foreign employees covered under the Act on the basis of cap of the pay drawn by them is based on a reasonable differentia for the reason that foreign nationals come to India to serve the Indian establishments to which the Act applies for shorter durations, whereas, the domestic employees, almost in all cases, serve the Indian establishments till they retire. It has thus been submitted that the period of employment with Indian



establishments to which the Act applies is the basis of classification, which is reasonable and does not violate the equality clause enshrined under Article 14 of the Constitution of India. The submission is that it is the economic duress that an Indian employee faces which is absent in case of a foreign employee because of short duration of employment and therefore this is the basis of classification which is reasonable.

44. In respect of the notice issued to the petitioner under Section 7A of the Act, it has been argued that such notice was issued because the petitioner did not submit his statutory returns as per the mandate of the scheme, and so far as the argument that the notice does not contain the details is concerned, such error is curable. On the basis of the aforesaid submissions, it has been urged by learned counsel for the respondents that the petition, being bereft of any merit, be dismissed.

ISSUES

45. Having heard the learned counsel for the parties and perused the records available before us on this writ petition, the issues which emerge for our consideration and adjudication in this case are as under:

a. Whether distinction made by introduction of paragraph 83 of the Scheme between foreign employees working in Indian establishment and domestic employees, inasmuch as that the foreign employees have been mandated to contribute under the Scheme irrespective of the amount of pay per month they draw whereas only those domestic employees are mandated to contribute to the scheme who are drawing pay upto Rs.15,000/- per



month, is without any reasonable basis and hence such classification is impermissible being violative of Article 14 of the Constitution of India.

b. Whether newly inserted paragraph 69 of the Scheme introduced by inserting paragraph 83 in the Scheme *vide* impugned notifications is arbitrary and unreasonable as it permits withdrawal of the amount standing to the credit of a foreign employee in the Fund only on retirement from service in the establishment at any time after he attains the age of 58 years though such an employee comes to India for serving the establishment for shorter duration of 2 to 5 years.

DISCUSSION AND ANALYSIS

46. For considering the argument raised by the learned counsel representing the petitioner based on unreasonable classification, we may refer to a judgment of Hon'ble Supreme Court in ***Union of India v. N.S. Rathnam & Sons***, (2015) 10 SCC 681, where the contours of justiceability of any notification on the touchstone of Article 14 of the Constitution of India has been discussed. The Hon'ble Supreme Court has observed that equal protection means 'Right to equal treatment in similar circumstances', both in the privileges conferred and in the liabilities imposed. Further observation made by the Hon'ble Supreme Court is that if two sets of persons are similarly situated, they have to be treated equally; however principle of equality does not mean that every law must have universal application for all persons who are not in the same position by nature, attainment or circumstances.



47. Elaborating further, the Hon'ble Supreme Court in **N.S. Rathnam (supra)** has observed that the State has the power to classify persons for legitimate purposes and that every classification in some degree is likely to produce some inequality, but mere inequality is not enough and that Article 14 of the Constitution of India can be said to be violated only if equal protection is denied to two persons belonging to the same class/category. It is also observed that for challenging any act on the part of the State as being violative of Article 14 of the Constitution of India, it is to be shown that there is no reasonable basis for the differentiation between the two sets of persons.

48. The Apex Court in **N.S. Rathnam (supra)** has also held that to pass the test of permissible classification, two conditions must be satisfied, namely, (1) that classification is founded on an intelligible differentia and (2) the differential must have a rational relation to the object sought to be achieved. It has further been observed that difference needs to be a reasonable classification and need not be grave; it only has to be shown that the difference is real and substantial. Paragraphs 13, 14 and 18 of the said report are relevant to be quoted here, which read as under:

“13. It is, thus, beyond any pale of doubt that the justiciability of particular notification can be tested on the touchstone of Article 14 of the Constitution. Article 14, which is treated as basic feature of the Constitution, ensures equality before the law or equal protection of laws. Equal protection means the right to equal treatment in similar circumstances, both in the privileges conferred and in the liabilities imposed. Therefore, if the two persons or two sets of persons are similarly situated/placed, they have to be treated equally. At the same time, the principle of equality does not mean that every law must have universal application for all persons who are not by nature, attainment or circumstances in the same position. It would mean that the State has the



power to classify persons for legitimate purposes. The legislature is competent to exercise its discretion and make classification. Thus, every classification is in some degree likely to produce some inequality but mere production of inequality is not enough. Article 14 would be treated as violated only when equal protection is denied even when the two persons belong to same class/category. Therefore, the person challenging the act of the State as violative of Article 14 has to show that there is no reasonable basis for the differentiation between the two classes created by the State. Article 14 prohibits class legislation and not reasonable classification.

14. What follows from the above is that in order to pass the test of permissible classification two conditions must be fulfilled, namely, (i) that the classification must be founded on an intelligible differential which distinguishes persons or things that are grouped together from others left out of the group; and (ii) that, that differential must have a rational relation to the object sought to be achieved by the statute in question. If the Government fails to support its action of classification on the touchstone of the principle whether the classification is reasonable having an intelligible differentia and a rational basis germane to the purpose, the classification has to be held as arbitrary and discriminatory. In *Sube Singh v. State of Haryana* [(2001) 7 SCC 545], this aspect is highlighted by the Court in the following manner : (SCC p. 548, para 10)

“10. In the counter and the note of submission filed on behalf of the appellants it is averred, inter alia, that the Land Acquisition Collector on considering the objections filed by the appellants had recommended to the State Government for exclusion of the properties of Appellants 1 and 3 to 6 and the State Government had not accepted such recommendations only on the ground that the constructions made by the appellants were of ‘B’ or ‘C’ class and could not be easily amalgamated into the developed colony which was proposed to be built. There is no averment in the pleadings of the respondents stating the basis of classification of structures as ‘A’, ‘B’ and ‘C’ class, nor is it stated how the amalgamation of all ‘A’ class structures was feasible and possible while those of ‘B’ and ‘C’ class structures was not possible. It is not the case of the State Government and also not argued before us that there is no policy decision of the Government for excluding the lands having structures thereon from acquisition under the Act. Indeed, as noted earlier, in these cases the State Government has accepted the request of some landowners for exclusion of their properties on this very ground. It remains to be seen whether the purported classification of existing structures into ‘A’, ‘B’ and ‘C’ class is a reasonable classification



having an intelligible differentia and a rational basis germane to the purpose. If the State Government fails to support its action on the touchstone of the above principle, then this decision has to be held as arbitrary and discriminatory. It is relevant to note here that the acquisition of the lands is for the purpose of planned development of the area which includes both residential and commercial purposes. That being the purpose of acquisition, it is difficult to accept the case of the State Government that certain types of structures which according to its own classification are of 'A' class can be allowed to remain while other structures situated in close vicinity and being used for same purposes (residential or commercial) should be demolished. At the cost of repetition, it may be stated here that no material was placed before us to show the basis of classification of the existing structures on the lands proposed to be acquired. This assumes importance in view of the specific contention raised on behalf of the appellants that they have pucca structures with RC roofing, mosaic flooring, etc. No attempt was also made from the side of the State Government to place any architectural plan of different types of structures proposed to be constructed on the land notified for acquisition in support of its contention that the structures which exist on the lands of the appellants could not be amalgamated into the plan."

....

18. We are conscious of the principle that the difference which will warrant a reasonable classification need not be great. However, it has to be shown that the difference is real and substantial and there must be some just and reasonable relation to the object of legislation or notification. Classification having regard to microscopic differences is not good. To borrow the phrase from the judgment in Roop Chand Adlakha v. DDA [1989 Supp (1) SCC 116 : 1989 SCC (L&S) 235 : (1989) 9 ATC 639] : "To overdo classification is to undo equality."

49. We, thus, now need to examine as to whether the classification between the foreign employee and Indian employee on the basis of capping in the pay drawn for the purpose of applicability of the scheme has some intelligible differentia and/or the same is reasonable so as to satisfy the test of any State action being in conformity or infringement of Article 14 of the Constitution of India.



50. The submission in this regard made by learned counsel representing the respondents is that such classification is based on the fact that foreign employees do not face economic duress, if they are made to become member of the fund/scheme, for the reason that they come to India for employment for shorter period of two to five years, whereas the Indian employees generally serve till they retire on attainment of age of superannuation and therefore, such long duration of employment of Indian employees causes economic duress in case they are mandated to contribute to the scheme.

51. We find ourselves in agreement with the said argument of the learned counsel for the respondents.

52. As a matter of fact, mandating the foreign employees to become member of the scheme/fund irrespective of the monthly pay they draw and requiring only those Indian employees to become member of the fund/scheme who are drawing pay below Rs.15,000/- a month, has a rationale based on the economic duress which is caused to the Indian employees, if they are mandated to contribute to the fund/scheme irrespective of quantum of salary they draw, which is absent in case of the foreign employees for the reason that they come to India for employment for shorter period of 2 to 5 years.

53. For the said reason, in our considered opinion, the classification made by inserting and later on substituting Para 83 in the principal scheme, is reasonable, and it also has an object sought to be achieved in the sense that the purpose of mandating an employee to be a member of a fund/scheme under the Act is to provide social security. In case all the Indian employees



irrespective of the amount of pay they draw per month, are mandated to become the member of the Scheme/Fund, they will be subjected to harsh economic duress for the reason they will be required to contribute to the Scheme/Fund throughout their period of employment which generally will be much large as compared to the length of employment of foreign employees in an Indian establishment, which normally is 2 to 5 years.

54. For the aforesaid reason, we find that the classification, which has resulted on account of introduction of Para 83 in the principal Scheme, satisfies the test of permissible classification, and therefore, it in our considered opinion that the same cannot be said to be violative of Article 14 of the Constitution of India.

55. It is true that Constitutional protection as enshrined in Article 14 of the Constitution of India is applicable to the foreign nationals as well for the reason that the phrase occurring in Article 14 is not “the citizen”; rather it is “any person”. Thus, even the foreign nationals enjoy under Article 14 of the Constitution of India the equality before law and equal protection of laws within the territory of India.

56. Having said that, we may observe that right of equality as enunciated by Article 14 of the Constitution of India, is subject to reasonable classification, which is permissible provided such classification has an intelligible differentia and is based on some rationale. We have already held above that the classification which results on account of introduction of paragraph 83 in the principal Scheme has a reasonable basis, and therefore, the submission on behalf of the petitioner that Article 14 of the Constitution



of India applies to foreign nationals as well, does not serve the cause of the petitioner in this petition.

57. Reference may be had to a judgment of the Bombay High Court, rendered on 07.08.2019 in Writ Petition No.1846 of 2018, **Sachin Vijay Desai v. Union of India & Ors.** In this case as well, the writ petition was filed by an individual Indian employee with the grievance that the scheme provides for a ceiling of contribution that an employee can make to the provident fund with matching ceiling of employer's contribution, irrespective of the salary of the employee and his willingness to make a contribution. The submission made in the said case was that in relation to 'International Workers' the scheme contains provisions somewhat different from rest of the employees and that in relation to employees other than 'International Workers', the scheme prescribes a ceiling of contribution, however, no such ceiling is prescribed in case of workers who are 'International Workers' and accordingly a plea of discrimination was taken.

58. Repelling the submission made by the petitioner in **Sachin Vijay Desai (supra)**, the Bombay High Court noticed various paragraphs of the Scheme, including the substituted paragraphs of the Scheme which were introduced by insertion of Paragraph 83 *vide* notifications, and substituted in the year 2008 and 2010 respectively, and held that 'International Workers' forms a separate and distinct class by themselves. The Bombay High Court further held that purpose and object of making special provisions with respect to such employees can easily be understood and that in the first category of such employees falls those Indian workers who have



employment abroad and would be governed by social security program of the country where they are employed, whereas the second category of employees is those non-Indian Passport holder workers working in India, which ordinarily would be on a shorter term and limited period employment.

59. In ***Sachin Vijay Desai (supra)***, it has further been held by the Bombay High Court that, considering the fact that complex considerations go into forming the scheme and making various provisions for contribution by an employee and the employer and the ability of the funds to give returns on such contributions, formation of two classes for differential treatment can easily be appreciated. Paragraphs 11 and 12 of the judgment of the Bombay High Court in ***Sachin Vijay Desai (supra)*** are extracted hereunder:

“11. Having thus examined the scheme, we are of the opinion that the international worker forms a separate and distinct class by themselves. The definition of international worker comes into two parts. First part pertains to an Indian employee having worked or going to work in a foreign country with which India has entered into a social security agreement and is eligible to avail the benefits under a social security programme of that country. Second part pertains to an employee other than an Indian employee, holding other than an Indian passport who is working for an establishment in India to which the Act applies. The purpose of this special clause is thus obvious. Special provisions were sought to be made for such class of employees which would include the Indian workers going to work abroad and non-Indian workers going to be working in India. The purpose and object of making special provisions with respect to such employees, can easily be understood. In the first category falls those Indian workers having their employment abroad would be governed by social security programme of the country of employment. The second clause applies to non-Indian passport holder workers working in India which ordinarily would be a short term or a limited period employment.

12. As against this, the Scheme includes larger number of Indian employees in various establishments to which the Act applies. The fund is created to provide a social security in old age and after retirement.



Complex considerations go into forming the scheme, making various provisions for contribution by an employee and the employer and the ability of the Fund to give returns on such contributions to the concerned employees. The formation of two clauses for differential treatment can be easily appreciated. The present is therefore, not a case where homogeneous clause of persons are sought to be artificially divided. It is a case where two separate and distinct classes of people are sought to be treated differently.”

60. Learned counsel for the petitioner has placed reliance on the judgment of the Karnataka High Court in **Stone Hill Education Foundation (supra)**, which was delivered by a learned Single Judge. We, however, are unable to agree with the reasoning given and conclusions arrived at by the learned Single Judge of the Karnataka High Court in the said judgment for the reason that the reasonability of the classification based on the economic duress faced by the Indian workers, which is absent in case of foreign workers, has not been considered; neither was it pleaded before the Karnataka High Court.

61. As already noticed above, any State action to meet the challenge based on Article 14 of the Constitution of India has to satisfy the test that classification under challenge is based on some intelligible differentia and it has a rational basis with the object sought to be achieved. We have already held above that the classification in the instant case has a reasonable basis, which is based on economic duress, and such consideration is absent in the judgment rendered by the Karnataka High Court. This persuades us to observe that the same cannot be treated to be a precedent to be followed by us. For this reason, we respectfully disagree with the reasoning given and



the conclusions drawn by the Karnataka High Court in *Stone Hill Education Foundation (supra)*.

62. So far as the submission of the petitioner that substituted paragraph 69 as is applicable to foreign employees is unreasonable, we may only observe that paragraph 83 in the Scheme has been added to implement India's international treaty obligations and entering into an international treaty is a sovereign prerogative, and therefore, if such a provision is struck down, that will amount to taking away the legal basis for entering into and applying the SSA.

63. For all the aforementioned discussion, we are unable to find any good ground to observe that substituted paragraph 69 of the Scheme, as introduced by paragraph 83 by means of the impugned notifications, suffers from any illegality which warrants striking down the provision.

64. For the reasons given above, we conclude that the challenge to the impugned notifications dated 01.10.2008 and 03.09.2010, whereby paragraph 83 was introduced and later on substituted, fails. As regards the challenge to the letter dated 14.03.2011 and summons dated 15.03.2012, the same also fails, for the reason that we have already upheld the validity of paragraph 83 of the Scheme.

W.P.(C) 6330/2021

65. Heard the learned counsel for the parties.

66. By filing this petition under Article 226 of the Constitution of India, challenge has been made to several notifications, including the notification



dated 01.10.2008 and 03.09.2010 whereby, for the first time, for 'International Workers', paragraph 83 was introduced and later on substituted in the Scheme by the Central Government in exercise of its powers vested in it under Section 5 read with Section 7(1) of the Act.

67. By the notification dated 04.05.2012, 24.05.2012 and 05.10.2012, certain amendments have been made in the newly introduced paragraph 83 in the Scheme, which is applicable to 'International Workers'.

68. A challenge has also been made to the circular letter dated 30.08.2011 issued by EPFO for ensuring compliance of the Scheme in respect of 'International Workers'. Another circular letter dated 25.05.2012 reiterates the compliance of the Scheme in respect of 'International Workers' which too has been issued by the EPFO. These circulars letters are also under challenge.

69. So far as the challenge to introduction and later on substitution of paragraph 83 of the Scheme, which is in relation to its application to 'International Workers', by means of the notifications dated 01.10.2008 and 03.09.2010 is concerned, we have already held above that there is no legal infirmity in the said notifications.

70. The subsequent notifications dated 04.05.2012, 24.05.2012 and 05.10.2012, incorporate certain minor amendments in the Scheme, the validity of which depends on the validity of the original notifications dated 01.10.2008 and 03.09.2010, whereby, for 'International Workers', paragraph 83 was introduced and later on substituted that provides for application of the Scheme with certain modifications to 'International Workers'.



71. Since we have already upheld the notifications dated 01.10.2008 and 03.09.2010 above, challenge to the notifications incorporating minor amendments, dated 04.05.2012, 24.05.2012 and 05.10.2012, also fails.

72. The circular letters dated 30.08.2011 and 25.05.2012 have been issued for the purposes of ensuring compliance of the Scheme in respect of 'International Workers' as incorporated *vide* notifications dated 01.10.2008 and 03.09.2010, and since the validity of these two notifications have been upheld by us, the challenge to these impugned circulars, also fails.

73. It is also to be observed that notice/summons issued to the petitioner on 06.08.2015 are again based on the provisions of paragraph 83 introduced and subsequently substituted *vide* notifications dated 01.10.2008 and 03.09.2010, and therefore, any challenge to such notice/summons also fails.

74. In view of the aforesaid, these writ petitions, along with pending application(s), if any, are also hereby dismissed.

75. We also provide that proceedings under Section 7A shall be drawn afresh by the EPFO strictly fulfilling the requirements given therein in respect of the petitioners in both the petitions which shall be concluded within a reasonable time period.

(DEVENDRA KUMAR UPADHYAYA)
CHIEF JUSTICE

(TUSHAR RAO GEDELA)
JUDGE

NOVEMBER 04, 2025

N.Khanna/"shailndra"/MJ