



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 14TH DAY OF NOVEMBER 2022

PRESENT

THE HON'BLE MR. JUSTICE ALOK ARADHE

AND

THE HON'BLE MR.JUSTICE S. VISHWAJITH SHETTY

W.A. No.1722 OF 2012 (L-PF)

BETWEEN:

1. M/S. SHELL INDIA MARKETS PVT. LTD.,
A COMPANY INCORPORATED UNDER THE
COMPANIES ACT 1956
REP BY ITS DIRECTOR
HAVING ITS CORPORATE OFFICE AT
RMZ CENTENNIALCAMPUS B
NO.8, B, KUNDANAHALLI MAIN ROAD
BANGALORE-560048
AND REGISTERED OFFICE AT
2ND FLOOR, CAMPUS 4A
RMZ MILLENIA BUSINESS PARK
43 DR. M.G.R. ROAD, PERUNGUDI
CHENNAI-600096.

2. MR. ANABIL DUTTA
AGED ABOUT 44 YEARS
S/O MR. NABA KUMAR DUTTA
EMPLOYEE/TRUSTEE
SHELL INDIA EMPLOYEES PROVIDENT FUND TRUST
HAVING ITS CORPORATE OFFICE AT
RMZ CENTENNIAL CAMPUS B
NO.8, B KUNDANAHALLI MAIN ROAD
BANGALORE-560048.

... APPELLANTS

(BY MRS. NIMISHA KUMAR, ADV.,)



AND:

1. THE CENTRAL PROVIDENT FUND COMMISSIONER
BHAVISHYA NIDHI BHAWAN
14, BIKAJI CAMA PLACE
NEW DELHI110066.
2. THE REGIONAL PROVIDENT FUND COMMISSIONER
SUB REGIONAL OFFICE
WHITE FIELD, 36, LAKSHMI COMPLEX
NH-4, OLD MADRAS ROAD
K.R. PURAM, BANGALORE-560036.
3. THE ASSISTANT PROVIDENT FUND COMMISSIONER
SUB REGIONAL OFFICE, WHITE FIELD, 36
LAKSHMI COMPLEX, NH-4, OLD MADRAS ROAD
K.R. PURAM, BANGALORE-560036.
4. THE SECRETARY
MINISTRY OF LABOUR
GOVERNMENT OF INDIA
SHRAM SHAKTI BHAVAN, RAFI MARG
NEW DELHI110001.

... RESPONDENTS

(BY MRS. SHWETHA ANAND, ADV., FOR R1-R3
R4 SERVED)

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THIS WRIT APPEAL IS FILED U/S 4 OF THE
KARNATAKA HIGH COURT ACT PRAYING TO SET ASIDE THE
ORDER PASSED IN THE WRIT PETITION 23078-79/11 DATED
10/2/12.

THIS W.A. COMING ON FOR HEARING, THIS DAY,
ALOK ARADHE J., DELIVERED THE FOLLOWING:



JUDGMENT

This intra court appeal arises out of an order dated 10.02.2012 passed by the learned Single Judge by which writ petition preferred by the appellants has been dismissed.

2. Facts leading to filing of this appeal briefly stated are that appellant No.1 is a company incorporated under the provisions of Companies Act, 1956 constituted on account of merger between three companies. The appellant No.1 was constituted as a result of merger between the three companies. The appellant No.1 constituted a provident fund trust for its employees by trust deed dated 06.01.2009. The appellant No.1, since, had adopted a scheme which offered better services than the statutory provident fund schemes, it submitted an application on 26.06.2009 seeking exemption under Section 17(2) of



the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as 'the Act' for short) read with para 27A of Employees Provident Fund Scheme, 1952 (hereinafter referred to as 'the Scheme' for short).

3. Thereafter, On 23.09.2009, the appellants submitted a revised application for grant of exemption with effect from 01.09.2009. An order of relaxation in exercise of powers under para 79 of the scheme was passed on 14.10.2009.

4. The Regional Provident Fund Commissioner issued a show cause notice on 04.02.2011 stating that the appellant No.1 has failed to comply with condition No.25 of para 27AA of the Scheme and the appellant No.1 was asked to show cause as to why order of relaxation dated 14.10.2009 be not



withdrawn. The appellant No.1 thereupon submitted a reply to the show cause notice on 15.03.2011. However, the Regional Provident Fund Commissioner by an order dated 01.06.2011 passed an order of withdrawal of the relaxation with effect from 01.04.2011. The appellants thereupon filed the writ petition, in which it sought quashment of condition No.25 of Appendix A to para 27AA of the Scheme as ultra vires to Section 17(2) of the Act and it being violative of Article 19(g) of the Constitution of India. In addition, the appellants also sought a writ of certiorari for quashment of order of withdrawal dated 01.06.2011 as well as a writ of mandamus directing the Assistant Provident Fund Commissioner to consider the application submitted by the appellant for grant of exemption under Section 17(2) of the Act in accordance with law.



5. The learned Single Judge by an order dated 10.02.2012 inter alia held that condition No.25 of Appendix A to para 27AA of the Scheme is not violative of Article 14 and Article 19(g) of the Constitution of India. The order dated 01.06.2011 was quashed with the liberty to Regional Provident Fund Commissioner to proceed in accordance with law. A writ of mandamus was also issued to the Secretary, Ministry of Labour, Government of India to consider the application submitted by the appellants dated 23.09.2009, in accordance with law. The writ petition was partly allowed. In the aforesaid factual background, this appeal has been filed.

7. Learned counsel for the appellants submitted that condition No.25 of Appendix A to para 27AA of the Scheme suffers from excessive delegation and the same is violative of Section 17(2) of the Act.



8. We have considered the submissions made on both sides and have perused the record. It is trite law that a subordinate legislation can be assailed on the ground that its provisions are either in conflict with the Constitution or the governing statute. Section 17 of the Act deals with the power of the appropriate government to exempt either prospectively or retrospectively from the operation of all or any of the provisions of the scheme in relation to an establishment as prohibited thereunder. Para 27A of the scheme enables the appropriate Government to exempt any establishment from operation of all or any of the provisions of the scheme. Para 27AA specifies the terms and conditions under which exemption is to be granted. Appendix A contains the conditions to be imposed while granting exemption under Section 17 of the Act.



9. Section 17(2) of the Act as well as Entry 25 of Appendix A to the Employees Provident Fund Scheme is extracted below for the facility of reference:

17. Power to exempt.—

(2) Any Scheme may make provision for exemption of any person or class of persons employed in any 8[establishment] to which the Scheme applies from the operation of all or any of the provisions of the Scheme, if such person or class of persons is entitled to benefits in the nature of provident fund, gratuity or old age pension and such benefits separately or jointly, are on the whole not less favourable than the benefits provided under this Act or the Scheme: Provided that no such exemption shall be granted in respect of a class of persons unless the appropriate Government is of opinion that the majority of persons constituting such class desire to continue to be entitled to such benefits.



25. *A company reporting loss for three consecutive financial years or erosion in their capital base shall have their exemption withdrawn from the first day of the next / succeeding financial year.*

10. The right to claim exemption from the provisions of the Act is a statutory right, which is governed by provisions of the Act. The Act envisages grant of exemption subject to fulfillment of terms and conditions. Section 17 of the Act empowers the appropriate government to impose terms and conditions. Condition No.25 of Appendix-A provides that a loss for three consecutive financial years or erosion in their capital base shall be a ground to withdraw the exemption.

11. Under Section 17 of the Act, the appropriate government has power to impose terms and conditions and therefore, the said condition



cannot be said to be violative of Section 17 of the Act. We have carefully perused the petition. The averments made in the petition is vague and does not clearly make out the grounds of challenge to condition 25 of Appendix-A. By incorporating Condition No.25 in Appendix-A, it has been provided that financial loss of an establishment for three consecutive years would result in withdrawal of exemption. The parent Act itself empowers the imposition of such terms and conditions as may be prescribed and condition No.25 cannot be said to be suffering from the vice of excessive delegation.

12. For the aforementioned reasons, in our considered opinion, the learned Single Judge has rightly concluded that condition No.25 of the Appendix-A of the scheme is intra vires. We do not



find any ground to differ with the view taken by the learned Single Judge.

In the result, the appeal fails and is hereby dismissed.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

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