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C.A.No. 4812 OF 2000

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ITEM NO. 101 COURT NO. 7 SECTION XV
(PH)

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

CIVIL APPEAL NO. 4812/2000

Gopal Gosala .. Appellant (s)

Vs.

Regional Provident Fund .. Respondent(s)
Commissioner

DATE : 25.7.2001 : This/These matter (s) was/were
called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S. RAJENDRA BABU
HON'BLE MR. JUSTICE DORAISWAMY RAJU

For Appellant (s) : Mr. H.L. Agrawal, Sr. Adv.
Mr.R.K. Gupta, Adv.
Mr. K.K. Gupta, Adv.

For Respondent (s) : Mr. C.V. Subba Rao, Adv.
Mrs. Kiran Bhardwaj, Adv.

UPON hearing counsel the Court made the following
O R D E R

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The appeal is allowed in terms of the signed order.

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Charanjit

[Om Prakash]
Court Master

[Signed order is placed on the file]

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4812/2000@@
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Gopal Goshala .. Appellant

Vs.

Regional Provident Fund Commissioner .. Respondent

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The appellant before us is established under the Rajasthan Gaushala Act, 1960 (in short the 'Act')for purpose of reception, protection and treatment of infirm, aged or deceased cattle and also for the purpose of keeping, breeding, rearing and maintaining cows.

When the Regional Provident Commissioner exercising his powers under the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the 'EPF Act') took action, a writ petition was preferred. A contention was raised before the High Court that it relates to construction of Section 1 (3) (a) of the Act and its applicability thereafter. The Commissioner determined a liability under Section 7-A to the tune of Rs.3,84,226.50 as per the details set out
2/-

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in the course of the order. The basis upon which he proceeded to make the order is that milk of some of the cows, fit for yielding milk, was being sold and the appellant is getting an income of 300 per day and there are 20 employees on its roll and as such the 'establishment' is covered under the head 'milk' and milk products industry' prescribed in Schedule 1 of the Act.

The learned Single Judge before whom the matter came up went into this plea as to the coverage under the Act. Audited income and expenditure accounts of the appellant for 26 years till 31st March, 1994 were produced before the learned Single Judge. The authenticity of the accounts is not in dispute. On perusal of the same would it was held that the expenses in running the gaushala is met mostly by donations and income from sale of milk is insignificant in comparison to total expenditure or even the amount spent on feeding the cows. He noticed that milk from milk yielding cows even in small quantities cannot be thrown away and it has to be made use of by selling to the donors or in the

market. The milk collected by the appellant was sent to the market for sale was not of decisive factor which could convert it into an establishment as engaged in manufacture of milk or milk products. The learned Single Judge also took the view that the dominant activity of the Gaushala is to protect the animals and not to manufacture milk or milk products and in that view of the matter upheld the contention of the appellant and allowed the writ petition. Thereafter an appeal was preferred to the Division Bench.

The Division Bench is of the view that in the writ petition there was no challenge made to the applicability of the provisions of the Act and as such no relief could have been granted in that regard.

We have gone through the pleadings and pleadings do indicate that there was a challenge to the applicability of the Act. In paragraph 6 of the writ petition it is stated that the appellant is not doing the work of milk products and is, therefore, not be covered

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by the provisions of the EPF Act. Thus, it may not be accurate to state that there is no plea raised in the petition. Particularly when the learned Single Judge understood the matter in that perspective and examined the question proceeded to consider the matter and disposed it of that aspect could not have been ignored by the Division Bench. Be as it may, it is clear that the learned Single Judge applied the correct test as to the dominant activities carried on by the appellant. He found that the expenditure of the entire Gaushala was met by the donation and the income from milk was meagre in comparison with the total expenditure or even the amounts spent on the fodder for the cows.

In that view of the matter we have no hesitation in setting aside the order made by the Division Bench and restore that of the learned Single Judge. The appeal is allowed accordingly.

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[S. RAJENDRA BABU]@@
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[DORAISWAMY RAJU]@@
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New Delhi, @@
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July 25, 2001 @@
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