

**Gajendran E. Vs. Regional Provident Fund Commissioner, Bangalore**

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**Court :** Karnataka

**Decided On :** Feb-21-1997

**Reported in :** 1997(3)KarLJ670

**Judge :** V.P. Mohan Kumar, J.

**Acts :** Employees' Provident Funds and Miscellaneous Provisions Act, 1952 - Sections 7A

**Appeal No. :** W.P. No. 15722/1991

**Appellant :** Gajendran E.

**Respondent :** Regional Provident Fund Commissioner, Bangalore

**Advocate for Def. :** Harikrishna S. Holla, Adv.

**Advocate for Pet/Ap. :** C.M. Monnappa, Adv.

**Judgement :**

ORDER

**V.P. Mohankumar, J.**

1. The petitioner challenges Annexure-A order passed by the respondent under Section 7A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. The petitioner runs an establishment called the London School of Speech,

No. 39 Coles Road, Bangalore. This institution was started by the petitioner's brother V. T. Alexander. It has got 8 branches having 32 employees. As the said Alexander found it difficult to run the institutions he closed some of the centres and leased the remaining ones to the senior teachers. Thereafter the respondent initiated a proceedings under Section 7A of the Act and notice was issued in this behalf. The present Principal of the institution is the sister of Late V. T. Alexander. She responded to the notice and contested the claim. According to her the branches are independent; that they have no control over the said branches; that the employees of the branches cannot be treated as the employees of the centre; that there is no control over the employees employed in the branch and the workers are working on their will and wish and as such the contribution quantified is not applicable to the petitioner. This contention was overruled ruled by the respondent and the impugned order is passed. The same is challenged by the petitioner in this proceedings.

2. I have heard Mr. Poonacha on behalf of Mr. Monnappa, learned Counsel for the petitioner.

It is relevant to Peruse the agreement wherein the following clauses are incorporated; it reads thus :

'2. The lessee shall adhere to the fee structure and other rules and regulations of the school, existing and which may be framed from time to time in the future.

3. The lessee shall issue receipts for all fees collected and submit to the lessor a weekly statement of all such receipts.

4. The lessee shall also permit duly authorised representatives of the lessor to visit the centre and examine the books of the centre, and answer all queries pertaining to the management and day to day affairs of the centre.

5. The lessee shall also pay weekly to the lessor Fifty per cent (50) of the gross receipt.

6. The lessor shall supply books and other teaching material required for use at the centre, and the Lessee shall pay for same at cost.

7. The lessor shall include the address of the lessee's centre in all advertisements in the daily newspaper, hand bills etc., whenever such advertisements are deemed necessary.

8. The lessor shall pay the rent of the premises but all other expenses such as staff salaries, hire of furniture, electricity etc., shall be borne by the lessee.'

The second clause of lease agreement states that the lessee shall adhere to the fee structure and other rules of the school existing and which may be framed from time to time. This means the branches have no independent fee structure. It has to depend on the centre on this aspect. Clause 3 states that the lessee shall issue receipts for all fees collected and to submit to the lessor a weekly statement of all such receipts. This clearly shows that the lessor has got absolute control over branches and these branches are accountable for the fees collected by them. As far as Clause 4 is concerned, it specially states that the centre has got all the powers to visit the branches to check the books and they are liable to answer all the queries regarding the day to day affairs. Clause 5 is the crucial clause which makes the lessee to pay weekly 50% of the gross receipts to the management. This shows that the centre has got complete control over the financial matter as well of the branches. Clause 6 says that the branches are liable to Day the cost of the books and other materials supplied by the centre. This also clearly indicates that centre has got control over the branches. It shows that the branches have no independent right to teach in its own way and whatever has to be taught has to be approved by the centre. Clause 8 indicates that the lessor shall pay the rent of premises when the lessee runs the institution. It also indicates that all other expenses such as staff salaries, hire of furniture, electricity etc., shall be borne by the lessee himself. All these expenses should be met by the branches with the 50% of the receipts left out after Paying the centre 50% of the gross receipts'. All these clauses in the agreement clearly indicate that the centre has got full control over the branches and therefore it could be said that there is interdependence between the branches and the centre. There is functional integrality between the centre and the branches. As such I do not find any error committed by the authorities by passing the impugned order. Writ petition is dismissed.

4. At the end, Mr. Poonacha requested that he may be permitted to seek waiver of the enforcement of the Act. The petitioner is free to make any appropriate application under Section 90 of the Act seeking waiver. If such an application is made, the authority may deal with the same in accordance with law.

5. Writ petition disposed of.

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