Before R. N. Mittal, J.

CHRISTIAN MEDICAL COLLEGE AND BROWN MEMORIAL HOSPITAL & another,—*Petitioners.*

versus

THE REGIONAL PROVIDENT FUND COMMISSIONER and others,—*Respondents.*

Civil Writ Petition No. 598 *of* 1981.

November 3, 1981.

Employees' Provident Funds and Miscellaneous Provisions Act (XIX of 1952)—*Sections* 1 (3) (*a*) & (b), 15 *and* 17—*Provident Funds Act (XIX of* 1925)—*Section* 8—*Constitution of India* 1950—*Article* 30—1952 *Act made applicable to a hospital by a Government notification—Government under section* 1 (3) (b)—*Whether could extend the Act to an establishment not similar to a factory—An establishment already governed by the* 1925 *Act*—1952 *Act—Whether could still be*

made applicable—Institutions run by minority communities—Whether could be subjected to the provisions of the 1952 *Act—Notification applying the* 1952 *Act to such institution—Whether violative of Article* 30.

Held, that by virtue of section 1(3) (a) of the Employees Provident Funds & Miscellaneous Provisions Act, 1952, it has been made applicable to all the factories engaged in any industry specified in Schedule 1 and employing twenty or more persons. By section 1(3) (b), powers have been given to the Government to make it applicable to other types of establishments where twenty or more persons are working. The powers under the section are wide and the Government in its discretion can notify the establishments under it. It is not spelt out from the preamble or the section that the notification can be issued only with respect to establishments which are similar to factories. The Act has given sufficient indication of the policy underlying its provisions, namely, that it shall apply to all factories engaged in any kind of industry and to all other establishments employing 20 or more persons. Where the discretion to apply the provisions of a particular statute is left with Government, it will be presumed that the discretion so vested in such a high authority will not be abused. Moreover, the Government is in a position to have all the relevant and necessary information in relation to each kind of establishment enabling it to determine which of such establishments can bear the additional burden of making contribution by way of provident fund for the benefit of its employees. Thus, the Central Government has the power to issue a notification under section 1(3) (b) regarding hospitals and make the 1952 Act applicable to them.

(Paras 5, 6 & 9).

Held, that from the provisions of the 1952 Act it is clear that it can be made applicable to establishments in which funds under the 1925 Act had been created. The 1952 Act not only provides certain protections to the fund but also creates it whereas the 1925 Act only gives protections to the fund created under it. There is no provision in the former Act which excludes its applicability to the establishments where the provident fund is deducted under the 1925 Act. Therefore, if an establishment is governed by the 1952 Act, it cannot be said that the provisions thereof will not apply to it because the provident fund is being subscribed under the 1925 Act. In other words, if the provident fund is being subscribed in an establishment under the 1925 Act, the provisions of the 1952 Act can be made applicable to it.

(Para 12).

Held, that Clause (1) of Article 30 of the Constitution of India 1950 provides that all minorities, whether based on religion or language shall have the right to establish and administer educational

institutions of their choice. From a bare reading of the Article, it is evident that the minorities have been given a right to establish the educational institutions. That does not mean that the State cannot make laws of any nature with respect to those institutions. It has got the power to make laws in the interest of better education, discipline, morality etc. The 1952 Act has been enacted by the State for providing benefits to the workers in an establishment and its application to institutions run by minority communities does not violate Article 30 of the Constitution.

(Paras 20 & 21).

Amended Writ Petition under Articles 226/227 of the Constitution of India praying that in the interest of justice equity and good conscience :—

(a) *That a writ of Certiorari or any other appropriate Writ, Order or Direction may kindly be issued restraining the respondents from taking any action in relation to letter dated 20th January, 1981, Annexures P. 16 and P. 20 and covering the petitioner-institution under the Employees' Provident Funds Act, 1952 as the same is illegal and unjustified and for declaring that the petitioner-institution is not covered by the 1952 Act ;*

(b) *That a Writ of Mandamus or any other appropriate Writ, Order or Direction may kindly be issued to the respondents that the 1952—E.P.F. Act is not applicable to the petitioner-institution ;*

(c) *That any other appropriate Writ, Order or Direction which in the circumstances of this case, this Hon'ble Court may deem fit and proper, may kindly be issued ;*

(d) *That pending final hearing of the Writ Petition this Hon'ble Court may be pleased to grant stay of action in implementation, furtherance or execution of the impugned letter dated 26th January, 1981 Annexure P. 16 and P. 20 and any enquiry connected with or incidental thereto.*

(e) *That pending disposal of the Writ Petition, the respondents may be further restrained from taking any steps for bringing the College under coverage of the E.F.P. Act, 1952, or from harassing the petitioner institution in any other way.*

(f) *That in view of the facts and circumstances of the case, the filing of the certified copies of the documents attached as Annexures may kindly be dispensed with ;*

(g) *That the issuance of notices to the respondents as required under the High Court Writ Rules, may kindly be exempted ;*

(h) *That the records of the case may also be sent for in this Hon'ble Court ; and*

(i) *That the costs of this writ petition may kindly be awarded to the petitioners.*

A. Vishwanathan, Advocate with V. Ram Swaroop, Advocate, *for the Petitioner.*

C. D. Dewan, Advocate with Ramesh Puri, Advocate, *for the Respondents.*

JUDGMENT

Rajendra Nath Mittal, J.

(1) Briefly, the case of the petitioners is that the Christian Medical College, Ludhiana (hereinafter referred to as the College), was started as a regular educational institution in 1894 by Dr. Dame Edith Brown. The purpose of the College, was to impart education to the women. Brown Memorial Hospital (hereinafter referred to as the Hospital) was a part of the College and was started simultaneously. The College used to train students for the L.S.M.F. and L.S.M. diplomas. It is now affiliated to the Panjab University. It admits 50 medical students to the first year course of the M.B.B.S., 20 students to the B.Sc. Nursing Course and 40 students to Diploma in Nursing every year. Besides, it admits 12 Medical Laboratory students for the diploma recognised by the Government of Punjab. It also trains students in post-graduate classes and at present it is recognised to train students for M.S. (Anatomy), M.D. (Physiology), M.D. and Ph.D. in Pharmacology, M.D. (Pathology), D.C.H. and M.D. in Paediatrics, M.D. (Medicine), D.O.M.S. (Opthalmology) D.M.R.D. and M.D. Radiology and Radio-Diagnosis, D.A.M.D. in Anesthesiology, M.S. (Orthopaedics), M.S. (General Surgery), M.C.H. (Plastic Surgery) D.G.O., M.D. in Obstetrics and Dymaecology, and also students for the Master of National Academy of

Medical Sciences which is the highest Indian degree in medical education. As per rules of the Medical Council of India, the minimum number of teaching beds for a College having 50 admissions per year is 800. In addition, additional beds are required for the post-graduate classes. It is alleged that a well-equipped hospital is inevitable concomitant to the College and is, therefore, its inseparable and integral part.

(2) The College was covered by the Provident Fund Act, 1925 (hereinafter called the 1925 Act) and continues to be so. The Provident Fund of the College is looked after by the Board of Trustees. The Regional Provident Fund Commissioner (hereinafter called the Commissioner) sent the notice dated 28th January, 1981, under section 7-A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the 1952 Act), calling upon the petitioner to produce its records before him on 16th February, 1981, for the purposes of conducting an inquiry and determining the amount due. The petitioner filed the writ petition challenging the notice *inter alia* on the ground that the College is an educational institution and is affiliated to the Panjab University. The Hospital is an integral part of the College and both the institutions are governed by the 1925 Act and, therefore, the provisions of 1952 Act are not applicable. The writ petition came up before the Bench on 13th February, 1981, for preliminary hearing. The learned Bench observed that it was directed against the show-cause notice under section 7-A of the 1952 Act and, according to the counsel, the petitioner-college did not come within the ambit of the said statute. The matter should be raised before the authority in reply to the show-cause notice. Consequently, it directed the petitioner to raise the question before the Commissioner. The case was adjourned to 6th March, 1981. In the meantime, the petitioner raised the question before the Commissioner who held that its objections were meaningless and the Hospital was covered under the 1952 Act. Consequently he adjourned the inquiry to 16th April, 1981, for determination of the amount of provident fund. A copy of the order was produced by it before the Bench on 6th March, 1981, and the case was adjourned to 13th March, 1981. Before that date, the petitioner filed an amended petition challenging the order of the Commissioner dated 2nd March, 1981, which has been duly admitted.

The writ petition has been contested by the respondents who controverted the allegations of the petitioner.

(3) The first contention of the learned counsel for the petitioners is that a notification dated 15th September, 1973, issued by the Government of India under section 1(3) (b) of the 1952 Act making the said Act applicable to every establishment known as a hospital is illegal. According to him, notifications under the section can be issued regarding establishments similar to factories and not covered by section 1(3) (a).

(4) I have given due consideration to the argument of the learned counsel but regret my inability to accept it. The preamble of the 1952 Act and section 1(3) read as follows :—

Preamble

"An Act to provide for the institution of provident funds for employees in factories and other establishments." (Emphasis supplied) Section 1(3).

"(3) Subject to the provisions contained in section 16, it applies—

(a) to every establishment which is a factory engaged in any industry specified in Scheduled-I and in which twenty or more persons are employed, and

(b) to any other establishment employing twenty or more persons or class of such establishments which the Central Government may, by notification in the official Gazette, specify in this behalf :

....."

Under section 1(3) (b), the Central Government has issued notification No. G.S.R. 1082, dated 15th September, 1973, making the 1952 Act applicable to an establishment known as a hospital. It is reproduced below for ready reference :—

"In exercise of the powers conferred by clause (b) of sub-section (3) of section 1 of the Employees' Provident Funds and Family Pension Fund Act, 1952 (19 of 1952),

> the Central Government hereby specifies *every establishment known as hospital run by any individual, association or institution* (.....), as the establishment to which the said Act shall apply with effect from the 31st August, 1973." (Emphasis supplied).

The main purpose for enacting the 1952 Act is to make some provision for the future of a workman after he retires or for the dependents in case of his early death. Therefore, the preamble says that it has been enacted to provide provident fund for the employees working in the factories and others establishments. The word "factory" has been defined in the Act as the premises in any part of which a manufacturing process is being carried on or is ordinarily so carried on with or without the aid of power. The word "establishment" has not been defined in the 1952 Act. It is well-settled that if a word is not defined in a statute, it should be expounded in its natural and ordinary sense. The ordinary meaning of the word "establishment" as given in the Webster's New International Dictionary, is 'place of business, with its fixtures and organised staff."

(5) By virtue of section 1(3)(a), the 1952 Act has been made applicable to all the factories engaged in any industry specified in Schedule I and employing twenty or more persons. By section 1(3)(b) powers have been given to the Government to make it applicable to other types of establishments where twenty or more persons are working. The powers under the section are wide and the Government in its discretion can notify the establishments under it. It is not spelt out from the preamble or the section that the notification can be issued only with respect to establishments which are similar to factories.

(6) In the aforesaid view, I get some support from the observations of their Lordships of the Supreme Court in *Mohmedalli and others* vs. *Union of India and another* (1) B. P. Sinha, C.J., speaking for the Court, observed that the establishments which do not come within the description of factories engaged in industries, the Central Government has been vested with the power of specifying such establishments or class of establishments, as it might determine, to be brought within the purview of the

(1) AIR 1964 SC 980.

1952 Act. The Act has given sufficient indication of the policy underlying its provisions, namely, that it shall apply to all factories engaged in any kind of industry *and to all other establishments employing* 20 *or more persons.* Where the discretion to apply the provisions of a particular statute is left with Government, it will be presumed that the discretion so vested in such a high authority will not be abused. It is further observed that the Government is in a position to have all the relevant and necessary information in relation to each kind of establishment enabling it to determine which of such establishments can bear the additional burden of making contribution by way of provident fund for the benefit of its employees.

(7) The above case was followed by the Madras High Court in *Cosmopolytan Club, Madras* vs. *Regional Provident Fund Commissioner, Madras,* (1A). The learned Judge held that a Central Government notification issued under section 1(3)(b) applying the provisions of the Employees Provident Funds Act to certain establishments employing more than 20 persons including the societies. clubs or associations which provided board or lodging or both or facilities for amusement, or any other services to any of their members, etc. covers a members' club even though i tis not proprietory and is without any profit motive. The dominant intention expressed by both the title as well as the contents of the 1952 Act is that it is enacted in the interests of employees in establishments not below a particular size. The expression "establishment" has not been defined. It is capable of a variety of meanings and where such an expression in common use is embodied in a statute, that particular aspect of the meaning of that expression which conforms to the underlying object and policy of the statute has to be adopted. Unlike other Acts the words "establishment" in the said Act has not been qualified in any way. It only means an organisation which employs a certain number of persons. Consequently, having regard to the previous history of the enactment and the changes it has undergone the intention of the Legislature cannot only be to apply the provisions to the establishments in the nature of business undertaking and as such the provisions of the said Act cannot be limited only to the proprietary clubs run with the intention of profit motive as a commercial venture.

(1-A) 1963 Lah. I.C. 71.

(8) In *Sri Varadarajaswami Transports* (Pvt.) *Ltd.* vs. *Regional Provident Fund Commissioner, Madras and another,* (2), similar view has been expressed and it has been observed that the word "establishment" has been used in several provisions of the 1952 Act and must be given its ordinary meaning and it means an organisation which employs persons between whom and the establishment the relationship of employee and employer comes to exist.

(9) I am, therefore, of the view that the Central Government had the power to issue notification under section 1 (3) (b) regarding hospitals and make the 1952 Act applicable to them. Thus, the notification is legal.

It is next contended by Mr. Viswanathan that the educational institutions are governed by the 1925 Act and, therefore, the 1952 Act cannot be applied to them. Thus the College being an educational institution is governed by the 1925 Act. According to him, the Hospital is a part of the College and is governed by the 1925 Act and therefore, the provisions of the 1952 Act cannot be applied to it.

(10) I have given due consideration to the argument of the learned counsel. The first question is whether the 1925 Act applies to the educational institutions. Section 8 of the 1925 Act *inter alia* provides that the appropriate Government may, by notification in the Official Gazette, direct that the provisions of the Act shall apply to any Provident Fund established for the benefit of the employees of the institutions specified in the Schedule and on making such declaration the Act shall apply accordingly, as if such Provident Fund were a Government Provident Fund and the authority having custody of the fund were the Government. The appropriate Government has also been authorised to add to the schedule the name of any public institution. The appropriate Government included the State Government. The schedule under section 8 includes a College affiliated to a University established by statute and the Panjab University. Regulation 13.1 of Chapter VII-E of the Punjab University Calendar, Volume I, 1981 Edition (at page 186), says that for the benefit of the employees, every College shall establish a Provident Fund for which

(2) A.I.R. 1965 Madras 466.

it shall follow the general pattern of the Provident Fund Rules as may be laid down by the Syndicate. The Panjab University has created a Provident Fund for its employees and the regulations in that regard are contained in regulations 14.1 to 14.16 of Chapter VI in the same volume. The College has established a Provident Fund under regulation 13.1 of Chapter VIII-E. No specific notification has been brought to my notice under section 8 by which the provisions have been made applicable by the appropriate Government to the College affiliated to the Panjab University or the Panjab University. However, the Senate of the Panjab University under section 31 of the Panjab University Act has been authorised with the sanction of the Government to make regulations consistent with the Act and to provide for all matters relating to the University. Regulation 13.1 *ibid* has been made under the said power. Thus, the 1925 Act has been made applicable to the Colleges affiliated to the Panjab University. The aforesaid view is supported by a letter from the Secretary to Government, Punjab, Health and Family Planning Department, to the Director, Research and Medical Education, Panjab, Chandigarh, dated 20th April, 1977, copy Annexure P/10. The subject of the letter is Notification under Provident Fund Act, 1976 (19 of 1925) Christion Medical College and Brown Memorial Hospital, Ludhiana. It is stated therein that as the Christian Medical College and Brown Memorial Hospital, Ludhiana, are affiliated to the Panjab University, Chandigarh, they are covered under the 1925 Act, and no further action was necessary at the Government level. A copy of the letter was forwarded to the Principal of the College. Reference may be made to another letter from the Secretary to the Government, Punjab, Health and Family Welfare Department, to the Principal, Christian Medical College, Ludhiana, dated 24th July, 1978, copy Annexure P110/A, wherein the same position has been reiterated. The letter reads as follows :—

> "It is certified that the Christian Medical College and Brown Memorial Hospital, Ludhiana, has been covered under section 8(2) of the Provident Funds Act, 1925 (19 of 1925) as this Institution is already affiliated with the Panjab University, Punjab, Chandigarh.

The second question is that if the Provident Fund is being subscribed in an establishment under the 1925 Act, whether the provisions of the 1952 Act can be made applicable to that establishment.

In order to determine the question it is relevant to refer to the statements of objects and reasons and the provisions of the 1925 Act and the 1952 Act. The statement of objects and reasons of the 1925 Act provides as follows :—

> "The Provident Funds Act at present provides that any sums standing to the credit of depositors in Provident Funds to which the Act applies at the decease of the deposition and which are payable, under the rules of the Fund, to the widow or children of the deceased shall vest in such widow or children ..... It is considered that this provision is unduly restrictive, and that the same degree of protection should be accorded to other dependants of the deceased besides his widow and children. Otherwise, the accumulations of a depositor, who dies before such accumulations are disbursed to him, may be held to be liable to meet the debts of the deceased, and the object of the Provident Fund in question may be frustrated.
>
> The Act protects compulsory deposits in a Provident Fund from attachments but not from assignments which may have been made to take effect on the depositor's retirement or on his death ..... It is considered that, in order to give effect to the object for which Provident Funds have been constituted, it should be made clear that, with certain exceptions, in spite of debts, liabilities, assignments or any form of encumbrance, the depositor on retirement, or his dependents or nominees, if he dies before retirement or after retirement but before actual disbursement, should receive intact the accumulations at his credit in the fund .....
>
> Again, under the Act as it stands, apart from the amounts which vest in the widow or children of a depositor, the disbursement of the accumulations in a fund at the time of the death of a depositor is impossible if the total assets exceed Rs. 2.000 without the production of probate or letters of administration or a succession certificate. It is considered desirable to permit such disbursement of the

accumulations if the amount does not exceed Rs. 5,000 instead of Rs. 2,000 at present .....

In order to give effect to these suggestions and also to certain other minor points, it is considered desirable to amend the existing Act and to re-enact it in a consolidated form."—

Gazette of India, 1924, Part V, page 122.

Section 3 of the 1925 Act relates to protection of compulsory deposits, section 4 to repayments, section 5 to rights of nominees, section 6 to power to make deductions and section 8 to power to apply the Act to the Provident Fund. From the perusal of the objects and reasons and the above-said sections, it is evident that the 1925 Act does not direct creation of a fund. According to them, if a fund is created by an institution contained in the Schedule, that fund shall be treated to be a Government fund and will enjoy certain protections and benefits. One of the protections is that the fund shall not in any way be capable of being assigned or charged and shall not be liable to attachment under any decree or order of Civil Court or Revenue Court in respect of any liability incurred by the subscriber or the depositor.

(II) The statement of objects, and reasons if the 1952 Act read as follows :—

"1. The question of making some provision for the future of the industrial worker after he retires or for his dependents in case of his early death, has been under consideration for some years. The ideal way would have been provision through old age and survivors' pensions as has been done in the industrially advanced countries. But in the prevailing conditions in India, the institution of a pension scheme cannot be visualised in the near future. Another alternative may be for provision of gratuities after a prescribed period of service. The main defect of a gratuity scheme, however, is that the amount paid to a worker or his dependents would be small, as the worker would not himself be making any contribution to the fund. Taking into account the various difficulties, financial and administrative, the most appropriate course appears to be the

institution compulsorily of contributory provident funds in which both the worker and the employer would contribute. Apart from other advantages, there is the obvious one of cultivating among the workers a spirit of saving some thing regularly. The institution of a provident fund of this type would also encourage the stabilisation of a steady labour force in industrial centres.

2 to 4 * * * * *.

5. Where Provident Funds exist in private industry, contributions are usually a percentage of the basic wage. Unlike Government Departments, wages in private industry have not, however, been rationalised and there are very great variations in the level of basic wages in private industry, even in different units in the same industry. If contributions are reckoned on the basis of basic wage only, there will, therefore, be wide changes in the degree of benefit received. This will be unfair to the workers and may also penalise those employees who have brought the level of basic wages more in accord with current requirements. Government appreciates that dearness allowance is a variable factor depending or the cost of living. Nevertheless, for the reasons explained, Government is satisfied that contributions to the Provident Fund should be on the basis of basic pay plus dearness allowance. This should not be construed as in any way implying that dearness allowances on the existing rates are to be recognised as a permanent measure.

6. * * * * *.

"7. Where provident funds offering equal or more advantageous terms are operating efficiently, provision has been made for them to continue subject to certain safeguards in the interest of the workers."

Section 1(3) of the 1952 Act has already been reproduced above, according to which that Act is at once made applicable to the establishments mentioned in clause (a) and to other establishments after

the notification has been issued under clause (b). Schemes are framed by the Government under section 5 which are called Employees' Provident Fund Schemes. After the framing of the scheme, a fund, in accordance with the provisions of the Act and the scheme, is established, and it is governed by the Central Board constituted under the Act. The control over the funds is that of the authorities under that Act, whereas it is not so under the 1925 Act.

(12) Under section 15 of the 1952 Act, on the application of any scheme to an establishment, the accumulations in any provident fund of the establishment, standing to the credit of the employees who become members of the fund established under the scheme is required to be transferred to the fund established under the scheme and is to be credited to the accounts of the employees entitled thereto in the fund. Section 17 authorises the Government to exempt certain establishments from the applicability of the provisions of the 1952 Act. From the aforesaid provisions, it is clear that the 1952 Act can be made applicable to the establishments in which fund under the 1925 Act had been created. The 1952 Act not only provides certain protections to the fund but also creates it whereas the 1925 Act only gives protections to the fund created under it. There is no provision in the former Act which excludes its applicability to the establishments where the provident fund is deducted under the 1925 Act. Therefore, if an establishment is governed by the 1952 Act, it cannot be said that the provisions thereof will not apply to it because the provident fund is being subscribed under the 1925 Act. In other words, if the provident fund is being subscribed in an establishment under the 1925 Act, the provisions of the 1952 Act can be made applicable to it.

(13) The third question that arises for determination is whether the hospital is a part of the College and, if so, whether the provisions of the 1952 Act are not applicable to it. It is contended by the learned counsel for the petitioners that the Medical Council of India under the Indian Medical Council Act, 1956, has framed regulations according to which the minimum number of teaching beds for a college having 50 seats is 500. The College admits 50 students in the M.B.B.S. class and thus 500 beds in the Hospital is a *sine qua non* for the recognition of the college. In addition, it admits students to various post-graduate classes and diploma classes. The Medical Council of India

further stipulates that there shall be different working sections, for example, gastro-enterology, neurology, cardiology etc. under medicine; thoracic surgery, neuro surgery genito-urinary surgery, etc. under surgery; with adequate staff and equipment. It also requires a pharmacy. The said sections have been provided in the Hospital. Moreover, one budget is framed for the College and the Hospital. Mr. A. Vishwanathan forcefully urges that in the aforesaid circumstances, the Hospital is a part of the College and the provisions of the 1952 Act cannot be made applicable to it.

(14) On the other hand, Dewan Chetan Dass, learned counsel for the respondents, urges that it is not disputed that the Hospital is well-equipped in all respects and it is functioning as such. It has been in existence since long and has its own independent individuality and existence. It is not different from any other hospital. The fact that the College is affiliated and requires a certain number of beds does not have any bearing on the question. The Hospital is maintained essentially for the care and treatment of the patients. Even though the beds intended for the benefits of the patients might be used for the purpose of teaching, the Hospital does not become a College. It is being run on commercial lines and is earning profits. It has its employees of all kinds who cater to the needs of the patients. He urges that in the aforesaid circumstances, it squarely falls within the purview of the notification, dated 15th September, 1973, issued under section 1 (3) (b) of the 1952 Act.

(15) I have given the consideration to the arguments of the learned counsel. It is not necessary to go into the details in which I have been taken by the learned counsel. Under the notification, the thing to be seen is whether an establishment is known as a hospital or not. It is immaterial whether it is run by an individual, association or an institution. The words 'known as hospital' are important. These words show that even if an establishment is not a hospital but known as such, the provisions of the 1952 Act will be attracted. In the present case, the Hospital is known as Brown Memorial Hospital, and the College is known as Christian Medical College. If in common parlance, an inquiry is made from a patient as to where he was being treated, he will not say that he was being treated in the

Christion Medical College, but will say that he was being treated in Brown Memorial Hospital. It is not necessary to go into the question as to how the budgets of the College and the Hospital are prepared and how the expenses are met. Admittedly, some of the employees are working wholly for the College and some wholly for the Hospital. There are some other employees who are working both for the Hospital and the College. There can be no difficulty in establishing the provident fund of the employees who are wholly working in the Hospital. There can be some difficulty about those employees who are working partly for the Hospital and partly for the College. That matter has, however, to be decided by the authorities under the 1952 Act, and if the petitioners are aggrieved against that decision, they may seek appropriate remedy.

(16) A reference has already been made to section 17 of the 1952 Act wherein the appropriate Government has been given a power to exempt any establishment from the operation of all or any provision of any scheme. In case the petitioners think that the provident fund created by them is more beneficial to the employees and is working well, they can apply for exemption to the Government and, I trust, it will decide the application considering all pros and cons of the matter.

(17) The learned counsel for the petitioners has made a reference to Annexure P. 10, a letter from the Secretary to Government, Punjab, Health and Family Planning Department, to the Director, Research and Medical Education, Punjab and Annexure P-10/A, another letter from the Secretary to Government, Punjab, Health and Family Welfare Department, to the Principal, Christian Medical College, Ludhiana, saying that the Christian Medical College, along with the Brown Memorial Hospital, Ludhiana, has been covered under section 8(2) of the 1925 Act, as the institution is affiliated to the Panjab University. The said letters, however, are not final for determining the controversy between the parties. As already observed above, the 1952 Act can be made applicable to the establishments in which the provident fund is being deducted under the 1925 Act.

(18) A similar question came up for decision before a Division Bench of Delhi High Court in (All India Institute of Medical Sciences,

Ansari Nagar, New Delhi vs. *Regional Provident Fund Commissioner, etc.*) (3). Briefly, the facts of the case are that All India Institute of Medical Sciences has been established with the objects to develop patterns of teaching so as to demonstrate a high standard of medical education and to bring together in one place educational facilities of the highest order for the training of personnel in all important branches of health activity. The institute not only provides for teaching and research but also runs a well-equipped hospital. Acting under the notification, dated 15th September, 1973, the Regional Provident Fund Commissioner sent to the Institute a notice to show cause why the 1952 Act should not be made applicable to the employees of the hospital. An objection was taken by the institute that it is mainly an educational institution while the hospital is merely incidental to the educational activities of the College. The Commissioner held that the 1952 Act was applicable to the hospital. The representation of the institute against the order of the Commissioner to the Central Government was dismissed by it. The writ petition was filed challenging that order. An argument was raised by the counsel for the petitioner that no hospital as such was maintained by the institute and that it was a part thereof. As the hospital had no separate identity, the provisions of the 1952 Act could not be applied to it. It was further contended that the Central Government had applied the provisions of the 1925 Act to the institute. The presumption was that the provisions of the 1952 Act would not be applicable to the hospital. The contention of the learned counsel was repelled. The following observations of the learned Bench may be read with advantage:—

> "...The choice before us is only between two options. Either the Act of 1952 applies to the legal personality of the Institute but only in relation to the hospital run by it or it does not apply to the Institute at all because the hospital cannot be separated from its other departments. The argument that we should adopt the second view is based only on the fact that there is no such separate entity as a hospital run by the Institute. If by the word 'entity' is meant a legal person, then the obvious answer to the argument is that the law does not require that the

(3) C.W. 379 of 1976 decided on 13th March, 1978.

provisions of the Act of 1952 can be made applicable only to the whole of the activity performed by a legal person. On the other hand, the amendment of section 1(3)(b) of the said Act is to the contrary. It says that the Act would apply to 'any other establishment' employing twenty or more persons' etc. Now, the word 'establishment' may refer to a legal person or may refer to the organisation or the work done by the legal person. It is not necessary for the application of section 1(3)(b) that the establishment itself must be a legal person. For instance, in section 1(3)(a) it is said that the Act would apply to 'every establishment which is a factory' etc. A 'factory' is defined in section 2(g) of the Act to mean 'any premises' etc. The factory is, therefore, a place and not a person. The word 'establishment' cannot, therefore, be said to exclusively mean a person in section 1(3)(b). For, the general rule of interpretation of statutes is that the same word is generally used with the same meaning unless the context or some other person makes it necessary to give it a different meaning. If the establishment does not have to be a legal person, then the hospital run by the Institute would be an establishment even though in itself it is not a separate legal person but is only a part of the legal personality of the Institute. The notification, dated September 15, 1973, could have been worded to say that the provisions of the Act of 1952 were made applicable to the Institute only in respect of the hospital run by it. But the same meaning is conveyed when the notification said that the Act of 1952 applied to every establishment known as hospital run by an individual or an institution. The difference in language does not make any difference in the outcome. The words "known as hospital' would mean either that the institution has itself named its hospital as a hospital or the users of the hospital and the people in general known it as a hospital. In both the senses, the hospital run by the Institute is a hospital. For, the Institute knows that it is running both the hospital as well as a teaching and research faculty and the patients and the people also know that when they go to the Medical Institute for medical treatment they go not to the teaching

and research faculty but to the hospital part of the Institute."

I am in respectful agreement with the above observations. The Bench consequently dismissed the writ petition. In the instant case, it is not necessary to go into the question as to whether the Hospital is a part of the College or not as in my view the notification is applicable to the Hospital even if it is a part of the College.

(19) The Last contention of the learned counsel for the petitioners is that the institutions which are run by the petitioners are minority institutions and it has got a right to run the same as it likes. The respondents, therefore, cannot apply the provisions of the 1952 Act to it. In support of his contention, the learned counsel relies on *Rev. Sidhrajbhai Sabbai and others vs. State of Gujarat and another* (4) *and Rev. Father W. Proost and others vs. The State of Bihar and others* (5).

(20) I am not impressed with this contention of the learned counsel as well. Clause (1) of Article 30 of the Constitution of India provides that all minorities, whether based on religion or language shall have the right to establish and administer educational institutions of their choice. From a bare reading of the Article, it is evident that the minorities have been given a right to establish the educational institutions. That does not mean that the State cannot make laws of any nature with respect to those institutions. It has got the power, to make laws in the interest of better education discipline, morality, etc. In the aforesaid view, I am fortified by the observations of the Supreme Court in *Rev. Sidhrajbhai Sabbai's case* (supra). J.C. Shah, J., speaking for the Court, observed as follows:—

"...All minorities, linguistic or religious have by Article 30(1) an absolute right to establish and administer educational institutions of their choice; and any law or executive directton which seeks to infringe the substance of that right under Article 30(1) would to that extent be void

(4) AIR 1963 S.C. 540.
(5) AIR 1969 S.C. 465.

> This, however, is not to say that it is not open to the State to impose regulations upon the exercise of this right. The fundamental freedom is to establish and to administer educational institutions; it is a right to establish and administer what are in truth educational institutions — institutions which cater to the educational needs of the citizens, or sections thereof. Regulations made in the true interests of efficiency of instruction, discipline, health, sanitation, morality, public order and the like may undoubtedly be imposed. Such regulaiions are not restrictions on the substance of the right which is guaranteed: they secure the proper functioning of the institutions, in matters educational."

The learned counsel for the petitioner made a reference to paragraph No. 15 of the said judgment wherein it was observed that Article 30(1) is intended to give a real right to the minorities for the setting up of educational institutions of their choice. The rigght is intended to be effective and is not to be whittled down by the so-called regulative measures conceived in the interest not of the minority educational institutions, but of the public or the nation as a whole. If every order which while maintaining the formal character of a minority institution destroys the power of administration is held justifiable because it is in the public or national interest, though not in its interest as an educational institution, the right guaranteed by Article 30(1) will be put a 'teasing illusion', a promise of unreality. In that case, the vires of two sets of Rules framed by the Government of Bombay — Rule 5(2) of the Rules for Primary Training Colleges, and Rules 11, 12 and 14 of the Rules for the recognition of the Private Training Institutions, were challenged. By Rule 5(2), the Government was authorised to reserve in non-Governmental Institutions, a percentage of seats for the Board deputed teachers, and the management of the institution had the right to admit students only for the unreserved seats. By Rule 11, authority was assumed by the Government to reserve seats for the Board deputed teachers; by Rule 12, it was provided that women teachers would be admitted in Women's Training Institutions; and by Rule 14, the Education Department was authorised to withdraw recognition or refuse payment of grant to any private training institution for non-fulfilment of the conditions set out in the Rules. In pursuance of

those Rules, 80 per cent of the seats were reserved by the Government. The petitioners, who belonged to the minority community, and were running a College challenged the Rules in the Supreme Court. It was held that Rules 5(2), 11 and 14 insofar as they relate to reservation of seats therein under orders of the Government and directions given pursuant thereto regarding reservation of 80 per cent of seats and the threat to withhold grant-in-aid and recognition of the College, infringed the fundamental freedom guaranteed to the petitioners under Article 30(1) of the Constitution.

(21) The challenge in the present case is not regarding the similar rules. On the other hand, the challenge is regarding the application of the 1952 Act which has been enacted by the State for the benefits of the workers in an establishment. In my view, the counsel for the petitioners cannot take any benefit from the above observations in this case.

(22) In Rev. Father W. Proest's case (supra) the writ was filed by the Principal and the Rector of St. Xavier's College, Ranchi, challenging section 48-A of the Bihar State Universities (University of Bihar, Bhagalpur and Ranchi) Act, 1960, whereby a Commission known as the University Service Commissioner was constituted and it was provided that the appointments, dismissals, removal and termination of service or reduction in rank of the teachers of an affiliated College not belonging to the State Government would be made by the governing body of the College on its recommendation. Some other similar powers were entrusted to the Commission. While the petition was pending, the Governor of Bihar promulgated an ordinance inserting section 48-B, after section 48-A, wherein it was provided that notwithstanding anything contained in sub-sections (6), (7), (8), (9), (10) and (11) of section 48-A, the Governing Body of an affiliated college established by a minority based on religion or language, which the minority has the right to administer, shall be entitled to make appointments, dismissals, removals, termination of service or reduction in rank of teachers or take other disciplinary measures subject only to the approval of the Commission and the Syndicate of the University. It was held that the College was founded by a Catholic Minority Community based on religion and it has the protection of Article 30(1) of the Constitution and, therefore, it was exempted

The aforesaid rights and obligations are specifically creatures of the statute alone. For instance, if the Act was not on the statute book no such 'industrial dispute' in their context could possibly arise. Therefore, the first test, in evaluating the issue is whether the right or obligation giving rise to the *lis* arises from the Act and Act alone. If this is so, then the only remedy available is to make resort to the Act and the forums and procedure prescribed by it and the jurisdiction of the Civil Court would be impliedly barred. But where the right or obligation giving rise to the industrial dispute springs from a source other then the Act—that is, under general law (including therein any other statutes) then the workman is given two alternative remedies. In such a case, it is in his discretion to either make resort to the ordinary jurisdiction of the Civil Court or to seek the remedy under the Act. However, he must distinctly effect his remedy and he cannot have both. He is to choose one or the other. Thus, where the dismissal or removal of a workman gives rise to a dispute arising out of the rights or liabilities under the general or the common law and workman has not even remotely resorted to any of the remedies under the Act, that is, no industrial dispute was sought to be raised nor any reference claimed under section 10 of the Act, the workman would be entitled to elect either of the two alternative remedies available to him. It must, therefore, be held that the civil court has jurisdiction to entertain a suit by the workman in connection with an industrial dispute arising out of a right or liability under the general or the common law if no steps had been earlier taken by him to resort to remedy under the Industrial Disputes Act. (Paras 8, 10, 11 and 14).

Banarsi Dass *vs.* State of Haryana and others.
1980(1) S.L.R. 355.

OVERRULED.

Case referred by Hon'ble Mr. Justice M. R. Sharma to a Full Bench on 27th January, 1981 for deciding the important questions of law involved in this case. The Full Bench consisting of the Hon'ble the Chief Justice Mr. S. S. Sandhawalia, the Hon'ble Mr. Justice P. C. Jain and Hon'ble Mr. Justice M. R. Sharma again referred the case to a Single Judge on 19th March, 1982 after answering the relevant question, for disposal of the case on merits...

Regular Second Appeal from the decree of the court of Shri R. S. Gupta Additional District Judge Rohtak dated 22nd February 1974 affirming that of Shri S. N. Chadha Sub Judge 2nd Class Rohtak dated 8th June, 1973 dismissing the suit of the plaintiff.

Application under Section 5 of the Limitation Act praying that the delay be condoned, so that the plaintiff—appellant does not suffer irreparable loss.

under secton 48-B of the Act. The learned counsel drew my attention to the observations of the Bench to the effect that the language of Article 30(1) is wide and must receive full meaning. No attempt to whittle down the protection can be allowed. The observations were made in the facts and circumstances of the case. In my view, it is also of no assistance to the learned counsel for the petitioners. I, therefore, reject this contention of the learned counsel for the petitioners also.

(23) For the aforesaid reasons, I do not find any merit in the writ petition and dismiss the same. In view of the complicated question of law involved in the case, I leave the parties to bear their own costs.