

**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL -CUM- LABOUR COURT,
ASANSOL**

PRESENT: Justice (Retd.) Ananda Kumar Mukherjee,
Presiding Officer,
C.G.I.T-cum-L.C., Asansol

EPFA No. 01 of 2020

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| Durgapur Municipal Corporation | Vs. | Appellant. |
| R.P.F.C.- II, Durgapur and Four Others | | Respondent. |

O R D E R

Dated: 26.06.2025

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| Mr. S. K. Khanna, Adv. | |
| Mr. Gopal Chakraborty, Adv. | |
| Mr. Bibhas Banerjee, Adv. | for the Appellant. |
| Mrs. Mousumi Ganguli, Adv. | for Respondent No. 1 to 4. |
| Mr. S. K. Panda, Adv. | |
| Ms. S. Thakur, Adv. | for Respondent No. 5. |

1. Instant appeal has been preferred by the appellant under Section 7-I of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the EPF Act), assailing the impugned order dated 29.08.2019 under Section 7-A of the EPF Act whereby the Regional Provident

Fund Commissioner – II, Durgapur assessed Provident Fund and allied dues of Rs. 6,58,85,853/- (Rupees six crore fifty-eight lakh eighty-five thousand eight hundred fifty-three only) against the appellant for non-remittance of Provident Fund dues of the Casual Safai Karmacharis in respect of their Provident Fund Code No. WB/DGP/58769 for the period from 08.01.2011 to September, 2017 and against order dated 25.09.2019 under Section 8-F of the EPF Act whereby the said amount was recovered as debt.

2. The fact of the case, in brief, is that Durgapur Municipal Corporation (hereinafter referred to as DMC), the appellant establishment is governed and controlled under the provision of West Bengal Municipal Corporation Act, 2006. A proceeding under Section 7-A of the EPF Act was initiated against DMC for alleged default in depositing the Provident Fund contribution under Provident Fund code No. WB/DGP/58769 for the period from 08.01.2011 to September, 2017 in respect of Casual Safai Karmacharis who were engaged by DMC on temporary basis as per guidelines of West Bengal Urban Employment Scheme, 2010 vide Notification No. 337/MA/P/C-10/35117/2010 dated 22.04.2010. The said Casual Safai Workers were engaged on daily basis on payment of Rs. 100/- per day on daily basis which was later enhanced to Rs. 120/- per day and there was no provision for extending Provident Fund facility to them like the regular employees of DMC.

3. The appellant establishment was brought under the coverage of the EPF Act from 08.01.2011 through a Notification bearing No. S.O. 30(E) dated 08.01.2011 issued by the Ministry of Labour and Employment, the Government of India, which was published in the Extraordinary Gazette of India No. 29. In the said Notification the Government of India specified certain establishment employing 20 or more persons as the class of establishment to which the said Act would apply from the date of publication of the Notification. It is asserted by

the respondent authority that the Act was applied to the Municipal Corporations, but DMC has failed to comply the provisions of the Act and Scheme, as such proceeding under Section 7-A of the EPF Act was initiated against appellant by issuing Summons bearing No. RO/DGP/ENF/CC-III/WB/58769/1285 dated 08.12.2017 to the employer establishment to represent their case on 27.12.2017. Representative of the appellant establishment appeared on 20.03.2018 and informed that the safai workers were actually engaged by DMC as per the guidelines of West Bengal Urban Employment Scheme, 2010 (hereinafter referred to as WBUES) and were paid Rs. 100/- per day which was later enhanced to Rs. 120/- per day and there was no provision for deduction or payment of Provident Fund. It is urged that the casual safai workers are not the permanent employees of DMC and they were employed under the WBUES for providing job for food to the poor people and no amount was deducted from their payment as contribution towards Provident Fund. It is asserted that Casual Safai Workers are appointed under DMC on temporary basis as per the above state sponsored scheme and they are not entitled to any Provident Fund. Further contention of the appellant is that Under Clause 3 of the Notification, the Department of Municipal Affairs, Government of West Bengal is the Nodal Department and DMC is required to follow the scheme under the supervision of the State Government. As per Clause 19 of the Scheme, the terms of service of the Casual Safai Workers have been fixed by the State Government and there is no provision for deduction of Provident Fund contribution from their pay towards Provident Fund. Furthermore, DMC is only the implementing authority under the supervision and control of the State Government. Therefore, DMC is not the employer in respect of the Casual Safai Workers in question and does not have the ultimate control in respect of the provisions of the Scheme, within the meaning of Section 2(e)(ii) of the EPF Act. According to the appellant, Provident Fund Authority, Regional Office, Durgapur did not take into consideration such facts and passed the impugned order without impleading the State Government as a party.

4. Appellant claimed that as per the aforesaid Scheme, the unemployed person could be engaged directly in various infrastructure development projects taken up under the Scheme and other projects taken up by the Municipal Corporations in terms of various State Government programmes and no contractor is engaged for any project taken up under the Scheme. Assailing the impugned orders dated 29.08.2019 and 25.09.2019, it is contended that the orders passed by the Regional Provident Fund Commissioner – II, Durgapur is mechanical, the respondent authority failed to take into account the appellant's case by not impleading the State Government as a party and by not considering the fact that under Section 6 of the EPF Act twelve percent (12%) of the Basic Wages is to be paid by the employer and employee in equal share and the workers cannot claim the benefit without contributing their share. It is urged that both the orders relating to assessment of Provident Fund under Section 7-A of the EPF Act dated 29.08.2019 and recovery of the amount under Section 8-F of the EPF Act dated 25.09.2019 are bad in law and liable to be set aside.

5. Provident Fund Authority, as Respondent No. 1 to 4 in this appeal have filed their reply on 10.08.2023. Specific case of the respondent authority is that the Casual Safai Workers of DMC are entitled to Provident Fund and the EPF Act applies to the employer establishment. According to the respondent, DMC is covered under the EPF Act and Scheme and a Provident Fund Code No. WB/DGP/58769 was allotted to it u/s 1(3)(b) w.e.f. 08.01.2011 on the basis of Notification issued by the Ministry of Labour and Employment, Government of India in Sub-Section (ii) of Section 3 of Part II, Extraordinary Gazette of India No. 29. The relevant extract of the Notification is as follows :

“S.O. 30(E).- In exercise of the powers conferred by clause (b) of sub-section (3) of Section 1 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), the Central Government hereby specifies the following

establishments employing twenty or more persons as the class of establishments to which the said Act shall apply, with effect from the date of publications of this notification in the Official Gazette, namely :-

“Municipal Councils and Municipal Corporations constituted under sub-clauses (b) and (c) of clause (1) of article 243Q of the Constitution of India.” ”

As Municipal Corporation failed to comply with the provision of the EPF Act and Scheme a complaint was lodged by the General Secretary of Casual Safai Karmacharis, working at DMC for their non-compliance from 08.01.2011 to September, 2017. The Provident Fund authority issued Summons to DMC vide Letter No. RO/DGP/ENF/CC-III/WB/58769/1285 dated 08.12.2017. A proceeding under Section 7-A of the EPF Act was initiated against DMC. The contention of the workers' union before the Provident Fund authority was that as per Notification dated 08.01.2011 of the Ministry of Labour and Employment, the Government of India all the Municipal Corporations in India are covered under the EPF Act and the Casual Safai Workers of DMC are also entitled to the benefits of Provident Fund from the date of notification, applying the Act to the employees working there i.e., 08.01.2011. The case was fixed on 27.12.2017, 16.01.2018, 22.02.2018 but none appeared for the appellant establishment. On 20.03.2018 representative of DMC appeared and claimed that the Casual Safai Workers were engaged as per guidelines of WBEUS issue under Notification dated 22.04.2010 and were paid daily wages and not entitled to any Provident Fund facility. The Enforcement Officer submitted his report on 08.10.2018 assessing an amount of Rs. 6,58,85,853/- towards Provident Fund dues payable by DMC for the period from 08.01.2011 to September, 2017 and the amount was recovered from DMC by order dated 25.09.2019. The Provident Fund authority claimed that the dues under Section 7-A of the EPF Act has been assessed in proper manner and a reasoned and speaking Order has been passed, which calls for no interference. It is submitted that the request of the petitioner appellant for impleading State Government as a party, respondent was examined during the

hearing on 19.07.2019 but the same was not accepted on the ground that the safai workers were employed by DMC for wages in connection of work of DMC and the wages were directly disbursed by the Municipal Corporation which was acting as the employer and the persons employed are included under the definition of 2(f) of the EPF Act. The respondent accordingly prayed for dismissing the appeal.

6. Mr. Subhas Chandra Saha, General Secretary, Durgapur Municipal Corporation Safai Workers' Association as Respondent No. 5 filed their reply on 10.08.2023. It is submitted by the union that the Casual Safai Workers of DMC have been engaged by the Municipal Corporation Authority for executing their work as per Notification dated 22.04.2010 issued by the Department of Municipal Affairs, Government of West Bengal and that the provisions of the EPF Act applied not only to the permanent employees of DMC but also to all other workers employed in the establishment irrespective of the fact whether they are permanent or casual. The union referring to a Notification issued by the Department of Labour, Government of West Bengal bearing No. 1137-IR/IR/MISC-11/11 dated 14.11.2011 which specified that all Departments / Companies / Local Authorities / Public Undertakings / Corporations / Statutory Bodies under the State Government are required to provide Provident Fund and Employees State Insurance to all the workers engaged through different agencies. Therefore, the appellant is obligated to pay the Provident Fund dues to the casual safai workers employed under the scheme. It is further submitted that the Department of Municipal Affairs, Government of West Bengal issued Notification dated 22.04.2010 with an object to generate employment and improve civil infrastructure in urban area by direct engagement of urban unemployed persons without involvement of contractors and the workers are required to be engaged directly by the establishment for executing various types of works under the Scheme. Such works are perennial in nature and under

Clause 10 of the Notification, the Urban Local Bodies are empowered to increase the rate of wages considering the nature of job. Thereby, vesting the appellant with power to increase the wages of workers under the Scheme, depending upon the nature of work rendered by them and the appellant also enjoyed the administrative control over the workers. The union representative urged that there is no merit in the appeal and the impugned orders call for no interference.

7. The issues which have arisen for consideration are : (i) whether the Casual Safai Workers engaged by DMC / appellant are covered by the definition of “employees” under Section 2(f) of the EPF Act. (ii) Whether DMC is exempted from application of the EPF Act under Section 16(1)(c) in respect of the Casual Safai Workers employed under WBUES. (iii) Does the impugned order passed by the Provident Fund authority suffers from illegality, calling for any interference?

8. Mr. S. K. Khanna, learned advocate, arguing the case for the appellant submitted that the appellant is excluded from application of the EPF Act under Section 16(1)(c) of the EPF Act. Referring to the provision of Section 1(3) of the EPF Act it is submitted that the EPF Act is applicable to every establishment in which twenty or more persons are employed, which is either a factory engaged in any industry specified in Schedule I, or an establishment which the Central Government may by notification in the Official Gazette specify in that behalf. It is argued that sub-Section 1 of Section 16 of the EPF Act qualifies those establishments which are excluded from the applicability of the EPF Act. As per Clause (c) of sub-Section 1 of Section 16 of the EPF Act an establishment setup under any Central, Provincial or State Act and whose employees are entitled to the benefit of Contributory Provident Fund or old age pension in accordance with any scheme or rule framed under that Act, governing such benefits is excluded from the purview of the EPF Act. Therefore, DMC which is setup under the State Act, whose employees are entitled to benefit of Contributory Provident Fund or

old age pension in accordance to their scheme or rule framed by the State Government is excluded from the purview and application of the EPF Act under Section 1(3). Learned advocate for the appellant argued that DMC was setup under the Durgapur Municipal Corporation Act, 1994, passed by the Government of West Bengal Legislative and it is governed by the West Bengal Municipal Corporation Act, 2006. According to the appellant the employees are entitled to Pension and Family Pension as well as death-cum-retirement Gratuity under the West Bengal Municipal (Employee's Death-cum-Retirement Benefits) Rules, 2003, which deals with grant of Pension on retirement, Death Gratuity and Family Pension. The employees are also entitled to General Provident Fund under the West Bengal Municipal (Employees' Service) Rules, 2010. Learned advocate contended that the regular employees of DMC are entitled to Provident Fund under the West Bengal Municipal (Employees' Service) Rules, 2010. Accordingly, DMC set up under the State Act and under the control of the State Government is excluded from the application of the EPF Act. It is submitted that unless any appropriate scheme is framed under Section 5 of the EPF Act and the same is notified under Section 7 read with Section 5 of the EPF Act, no such scheme can be made applicable.

9. Learned advocate argued that as per Section 5 of the EPF Act the Central Government by Notification in the Official Gazette has to specify the establishment or class of establishments to which the scheme shall apply and Section 7(1) of the EPF Act provides for any modification of the scheme which may be added or amended by the Central Government by issuing Notification. Referring to Section 7(2) of the EPF Act it is submitted that the Act provides that every notification issued under sub-section (1) shall be laid, as soon as may be after it is issued, before each House of Parliament. It is argued that in the instant case as the Central Government has not issued any Notification under Section 5 read with Section 7 of the EPF Act, specifying the class of establishments to

which the scheme shall apply and nothing has been placed before the Parliament for adopting any scheme in respect of the Casual Safai Workers, the Casual Safai Workers are not entitled to any facility towards Provident Fund.

10. The second facet of the argument is that Casual Safai Workers have been engaged by DMC according to the provisions of WBUES and they are not employees of the appellant establishment and the wages are not paid out of the fund of the appellant establishment. It is the State Government, that pays the wages to the employees under WBUES and no deduction is done by DMC from the wages of such employees.

11. Mr. S. K. Khanna, learned advocate further argued that once the twin conditions specified in Section 16(1)(c) of the EPF Act are fulfilled, the establishment is exempted from application of provision of the Central Act. On such exclusion of the establishment under Section 16(1)(c) of the EPF Act the provisions of the Central Act will have no application to the establishment. It is argued that the exemption is for the establishment as a whole and for all purposes, from the application of the Central Act. Once the establishment is covered by the excepted category specified in Section 16, the EPF Act cannot be invoked against such establishment on the specious reasoning that some of the part-time employees / casual workers working therein were not covered by the Provident Fund Scheme formulated for the establishment, which is applicable to rest of the employees. Learned advocate in support of his argument relied upon the decision of the Hon'ble Supreme Court of India in the case of **M/s. Yeshwant Gramin Shikshan Sanstha Vs. The Assistant Provident Fund Commissioner & Others [(2017) 5 SCC 579]**. In the said case the Hon'ble Supreme Court of India held that the impugned order fastening liability on the petitioner, an excluded establishment to make payment towards Provident Fund under provision of the EPF Act is legally unsustainable and allowed the Writ Petition.

12. Learned advocate for the appellant to fortify his argument placed relied upon the decision of the Hon'ble Supreme Court of India in the case of **Regional Provident Fund Commissioner Vs. Sanatan Dharam Girls Secondary School [(2007) 1 SCC 268]**, and submitted that in order to be covered under the exception to the EPF Act, the following two conditions have to be satisfied by the establishment seeking to be exempted from the provision of the Act :

- (i) It must be an establishment belonging to or under the control of the Central Government or a State Government, and
- (ii) It must be an establishment whose employees are entitled to the benefit of contributory provident fund or old age pension in accordance with any scheme or rule framed by the Central Government or the State Government governing such benefits.

It is argued that in the case of **Sanatan Dharam Girls Secondary School**, the respondent institution was under the substantive control of the State Government of Rajasthan under the Rajasthan Non-Government Educational Institutions Act, 1989 and had been paying Provident Fund dues in accordance with the scheme framed by the State Government under the 1989 Act, thereby satisfying both the conditions to qualify for the exception under Section 16(1)(b). In the said case it was decided that the State Act having received the President's assent subsequent to applicability of the EPF Act, the 1989 Act would have overriding effect in the State under Article 254(2) of the Constitution of India and there was no scope for transfer of respondent institution's employees Provident Fund to the EPF Act. Learned advocate argued that the present case is similar in nature where the appellant establishment being setup under the State Act and having scheme under the State Act for payment of Provident Fund to its regular employees, DMC is exempted from the application of the EPF Act and the impugned order against it is not sustainable under the law.

13. Learned advocate for the appellant further relied upon the decision of the

Hon'ble High Court of Chhattisgarh in the case of **Employees' Provident Fund Organisation (Regional Office) Vs. M/s. Raipur Development Authority [(2015) 144 FLR 1069]**. In the case of M/s. Raipur Development Authority constituted by the State Government, Notice was received from Employees' Provident Fund Organisation (Regional Office) dated 31.01.1995 disclosing that it was covered under the EPF Act and the establishment having failed to comply the mandatory provisions under the EPF Act would be proceeded under Section 7-A of the EPF Act. In their reply M/s. Raipur Development Authority submitted that it is constituted under Adhiniyam, 1973 and is governed by the Rules i.e., called as Madhya Pradesh / Chhattisgarh Development Authority (Officers and Ministerial) Recruitment Rules, 1987, which deals with the Contributory Provident Fund for the employees of the Authority constituted under the Adhiniyam, 1973 and the employees of M/s. Raipur Development Authority are governed by the said Rules namely, M.P. Contributory Provident Fund Rules, 1955, under which Contributory Provident Fund of the employees of M/s. Raipur Development Authority are deducted and deposited in the Bank in regular manner. By virtue of the provisions under Section 16(1)(c) of the EPF Act, the EPF Act shall not apply to the appellant establishment and therefore proceeding instituted under the EPF Act and impugned orders are liable to be set aside. The Employees' Provident Fund Organisation after considering the reply of M/s. Raipur Development Authority passed a final order of assessment under Section 7-A of the EPF Act, determining the dues of M/s. Raipur Development Authority, amounting to Rs.8,46,80,024/- and held that M/s. Raipur Development Authority, which is established and controlled by the State Government, is not entitled to be exempted from the operation of the EPF Act and the said amount to be recovered by the Employees' Provident Fund Organisation from the establishment. The order was challenged before the Employees' Provident Fund Appellate Tribunal, New Delhi, which allowed the appeal. Employees' Provident Fund Appellate Tribunal, New Delhi, held that the members are governed by the

scheme and are getting the benefit of Contributory Provident Fund. It was observed that both conditions for application of Section 16(1)(c) of the EPF Act were fulfilled and the establishment is excluded from application of the EPF Act. On being challenged before the Hon'ble High Court, Chhattisgarh, the order of Employees' Provident Fund Appellate Tribunal, New Delhi, was upheld and the Writ Petition was dismissed. Learned advocate for the appellant relying on the decision discussed above argued that the present appellant establishment having been excluded under Section 16(1)(c) of the EPF Act and the benefits of Provident Fund being extended to its regular employees under a separate scheme provided in the West Bengal Municipal (Employee's Death-cum-Retirement Benefits) Rules, 2003 and West Bengal Urban Employment Scheme, 2010, the provisions of the EPF Act cannot be invoked against such establishment in respect of its casual safai workers, who are not covered by the scheme applicable to the rest of the employees. It is urged that the EPF Authority has acted beyond its jurisdiction by initiating the proceeding under Section 7-A of the EPF Act.

14. Concluding his argument Mr. S. K. Khanna submitted that the twin test laid down under Section 16(1)(c) have been satisfied in the case of appellant. Therefore, DMC is excluded from the application of the EPF Act and the order passed by the Regional Provident Fund Commissioner – II, Durgapur, allowing Provident Fund benefits to the casual workers of DMC amounting to Rs. 6,58,85,853/- as Provident Fund dues under Section 7-A of the EPF Act is illegal, arbitrary and the same is liable to be set aside. Learned advocate further argued that an amount of Rs. 6,58,85,853/-, which has been realized from the appellant on the strength of order dated 25.09.2019 under Section 8-F of the EPF Act is bad in law and is not sustainable under the facts and circumstances of the case and urged that the impugned order is liable to be set aside and prayed for passing an order directing the respondent authority to refund the amount recovered under Section 8-F of the EPF Act to the appellant.

15. Mrs. Mousumi Ganguli, learned advocate appearing for Respondent No. 1 to 4 argued that the impugned orders passed by the Provident Fund authority are consistent with the facts and law involved and the same call for no interference. Learned advocate submitted that DMC has been allotted Provident Fund Code No. WB/DGP/58769 under Section 1(3)(b) of the EPF Act w.e.f. 08.01.2011. The Ministry of Labour and Employment, Government of India, in their Notification bearing No. S.O. 30(E) dated 08.01.2011, published in the Extraordinary Gazette of India No. 29, provided that :

“In exercise of the powers conferred by clause (b) of sub-section (3) of Section 1 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), the Central Government hereby specifies the following establishments employing twenty or more persons as the class of establishments to which the said Act shall apply, with effect from the date of publications of this notification in the Official Gazette, namely :-

“Municipal Councils and Municipal Corporations constituted under sub-clauses (b) and (c) of clause (1) of article 243Q of the Constitution of India.” ”

The EPF Act was made applicable to all the Municipal Corporations by virtue of such Notification. Learned advocate further argued that the aggrieved employees, represented by the union are covered under the EPF Act as per the definition of “employees” in Section 2(f) of the EPF Act. In reply to the claim of the appellant that the establishment is excluded from the application of the EPF Act under Section 16 of the EPF Act, it is submitted that the relevant portions of Section 16(1)(b) and 16(1)(c) of the EPF Act lays down that :

*“ **S.16(1)(b)** to any other establishment belonging to or under the control of the Central Government or a State Government and whose employees are entitled to the benefit of contributory provident fund or old age pension in accordance with any scheme or rule framed by the Central Government or the State Government governing such benefits; or*

***S.16(1)(c)** to any other establishment set up under any Central, Provincial*

or State Act and whose employees are entitled to the benefits of contributory provident fund or old age pension in accordance with any scheme or rule framed under that Act governing such benefits; ”

16. Learned advocate argued that for exclusion of the establishment from the application of the EPF Act, preconditions of satisfying twin tests have to be followed. It is pointed out that satisfying one of the conditions laid down in Section 16(1)(b) or 16(1)(c) of the EPF Act is not sufficient. It is not only necessary that for exclusion of the establishment from application of the EPF Act, the establishment should belong to or should be under the control of the Central Government or a State Government but its employees should be entitled to the benefits of Contributory Provident Fund or old age pension in accordance with the scheme or rule framed by the Central Government or a State Government, governing such benefits. Learned advocate further argued that the Act shall also not apply to any other establishment set up under Central, Provincial or State Act whose employees are entitled to the benefits of Contributory Provident Fund (hereinafter referred to as CPF) or old age pension in accordance with any scheme or rule framed under that Act, governing such benefits. In the present case DMC has been set up in the year 1994 and governed by the West Bengal Municipal Corporation Act, 2006. The Casual Safai Workers who are directly engaged by the corporation, having supervision and control over them does not have any scheme or rule for extending the benefits of CPF or old age pension to the Casual Cleaning Workers (Safai Karmacharis). Under such circumstances Section 16(1)(c) of the EPF Act cannot be invoked in respect of the Casual Safai Workers of DMC for the purpose of exemption of DMC from the application of the EPF Act. Learned advocate in support of her argument relied upon a decision of the Hon'ble Division Bench of the High Court at Calcutta in the case of **Central Provident Fund Commissioner Vs. Tarakeswar Municipality & Others [CAN 6209 of 2019]**, where the Hon'ble High Court upholding the applicability of

Central Government Notification on applicability of the EPF Act observed that :

“We notice that an organisation either has to have a own Provident Fund and Pension Scheme pari materia with the scheme framed by the Provident Fund Authorities or shall be covered by the scheme framed by the Provident Fund Authorities. The Municipalities were admittedly notified organisations to be covered by the scheme framed by the Provident Fund Authorities and there has been a Gazette publication to that effect on 8th January, 2011.”

The Hon’ble High Court in that case held that if the Municipal authorities want themselves to be exempted from the scheme, they have to approach the authority concerned as provided in the EPF Act.

17. Learned advocate for Respondent No. 1 to 4 also relied upon a decision of the Hon’ble High Court of Madras in the case of **Karaikal Municipality Vs. Union of India and Others [2020 SCC OnLine Mad 24536]**, where a Writ Petition was filed by the municipality for a declaration that the Gazette Notification bearing No. S.O. 30(E) dated 08.01.2011 had no application to the petitioner municipality and consequently forbear the respondent authority from initiating any action for recovery from the petitioner. In the said decision the Hon’ble Court held that it is imperative from the statutory provision that the petitioner has to ensure that those of its employees who are not covered by Pondicherry Municipal Subordinate Services (Provident Fund) Rules, 1979 (hereinafter referred to as PMSSPF Rules), are extended the benefits under the EPF Act w.e.f. 08.01.2011, when the said Notification issued by the Central Government came into force and the records maintained by the Contractors for the wages disbursed to the contract labour, when they were employed in the establishment of the Petitioner, would be the basis for determining the contribution of provident fund dues under the EPF Act. As a corollary, it would follow that the Petitioner as Principal Employer, who ought to have verified that the contract labour engaged through Contractors had been paid eligible amount

of wages in time, cannot shirk responsibility to find out the employees and workers concerned for remitting dues under the EPF Act for the relevant period, and the Petitioner would be entitled for this purpose to make an application under Section 7-A(2) of the EPF Act before the concerned authority in the Employees Provident Fund Organization to issue summons to the Contractors. It is argued that though the regular employees of Karaikal Municipality were covered by PMSSPF Rules for their pension, the employees who were not covered by the said rules were extended the benefits under the EPF Act w.e.f. 08.01.2011 as per Notification bearing No. S.O. 30(E) dated 08.01.2011. Learned advocate for the respondent urged that there is no merit in the appeal, challenging the impugned order and the same is liable to be dismissed.

18. The union of Casual Safai Karmacharis at DMC, figuring as Respondent No. 5 and represented by Mr. S. K. Panda, learned advocate, filed a written note of submission. It is stated by the Respondent No. 5 that the Casual Safai Karmacharis were engaged by DMC as per Notification bearing No. 337/MA/P/C-10/3511712010 dated 22.04.2010 issued by the Municipal Affairs Department, Government of West Bengal. The appellant was allotted Provident Fund Code by the Provident Fund authority, applying the EPF Act upon all the workers engaged by the appellant. The Department of Labour, Government of West Bengal in their Notification bearing No. 1137-IR/IR/MISC-11/11 dated 14.11.2011 clearly stated that all the department, local bodies, statutory operation, public undertaking are to provide Provident Fund, Employees' State Insurance to all the workers engaged through agencies, thereby making DMC liable to cover all the casual workers employed under it. Provident Fund code was allotted to DMC, bearing No. WB/DGP/58769 in exercise of powers under Section 1(3)(b) of the EPF Act by issuing a Notification dated 08.01.2011 and the Government of India in the Extraordinary Gazette of India No. 29 published Notification No. S.O. 30(E) dated 08.01.2011. The Notification envisage that the

EPF Act shall apply to the establishment like Municipal Councils and Municipal Corporations constituted under sub-clause (b) and (c) of Clause 1 of Article 243-Q of the Constitution of India, which employed twenty or more persons from the date of Notification i.e., 08.01.2011. Since the appellant establishment did not comply with Notification dated 08.01.2011, a complaint was lodged before the EPF establishment for recovery of Provident Fund dues from 08.01.2011 till September, 2017. Respondent No. 5 relying upon the decision of the Hon'ble Supreme Court of India, in the case of **The Officer In-Charge, Sub-Regional Provident Fund Office & Another Vs. M/s Godavari Garments Limited [Civil Appeal No. 5821 OF 2019]**, urged that the Safai Karmacharis are entitled to the EPF benefits as per Notification dated 08.01.2011. Respondent No. 5 adopted the argument advanced on behalf of Respondent No. 1 to 4 and prayed for dismissal of the appeal.

19. Perused the Memorandum of Appeal, impugned order, replies filed by the Provident Fund authority and Durgapur Municipal Corporation Safai Workers' Association, representing the Casual Safai Workers. Also considered the arguments advanced by the learned advocates for the respective parties and their written submissions. It may be discerned from the pleadings of the parties that DMC implemented WBUES dated 22.04.2010, by creating direct employment for unemployed persons at Urban Local Body as casual workers for cleaning and sweeping the Municipal areas of Durgapur on fixed remuneration. Though the workers are casual in nature their employment is perennial and the employees are under the direct control and supervision of DMC. The employees are not permanent but qualify the conditions for being included within the definition of the term "*employee*" under Section 2(f) of the EPF Act which lays down that any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of the establishment, and includes a worker engaged by or through a contractor. It is an inclusive definition and widely

worded to include “any person” who is employed. There is no distinction of employees employed on permanent, temporary, contractual or casual basis. The object of the EPF Act is to extend social security benefit to the employees for the rest of their life after exit from their work. Therefore, I hold that the casual Safai Karmacharis of DMC are covered under the definition of “employee” under Section 2(f) of the EPF Act, 1952.

20. It is now worthwhile to consider if DMC is exempted from the application of the EPF Act. Section 16 (1) of the EPF Act provides that the Act shall not apply to :

- “ (b) *to any other establishment belonging to or under the control of the Central Government or a State Government and whose employees are entitled to the benefit of contributory provident fund or old age pension in accordance with any scheme or rule framed by the Central Government or the State Government governing such benefits; or*
- (c) *to any other establishment set up under any Central, Provincial or State Act and whose employees are entitled to the benefits of contributory provident fund or old age pension in accordance with any scheme or rule framed under that Act governing such benefits. ”*

The appropriate provision attracted to the appellant is Section 16(1)(c) of the EPF Act as DMC was established under a State Act i.e., the Durgapur Municipal Corporation Act, 1994.

21. In case of **Regional Provident Fund Commissioner Vs. Sanatan Dharam Girls Secondary School [(2007) 1 SCC 268]**, relied upon by the Provident Fund department, the Hon’ble Supreme Court of India laid down the twin tests to be satisfied for an establishment to seek exemption from the provisions of the EPF Act which are : **(i)** the establishment must be either *belonging to* or *under the control of* the Central or the State Government. The phrase “*belonging to*” would

signify ownership of the Government, whereas the phrase “*under the control of*” would imply superintendence, management or authority to direct, restrict or regulate the establishment. **(ii)** the second test is that the employees of such an establishment should be entitled to the benefit of CPF or old age pension in accordance with any scheme or rule framed by the Central Government or the State Government governing such benefits or as the case may be, that Act governing such benefits. The Hon’ble Court held that if both the tests are satisfied, an establishment can claim exception / exclusion under Section 16(1)(b) of the EPF Act. In the case **Regional Provident Fund Commissioner Vs. Sanatan Dharam Girls Secondary School [(2007) 1 SCC 268]**, the respondent institution being under the substantive control of the State Government under the Rajasthan Non-Government Educational Institutions Act, 1989, and having been paying Provident Fund dues to the State Government in accordance with a scheme framed by the State Government under the 1989 Act, satisfied both the conditions for being exempted under Section 16(1)(b) of the EPF Act. It was held that the 1989 Act having received the President’s assent subsequent to the application of the EPF Act, 1952, the 1989 Act would have overriding effect in the State under Article 254(2) of the Constitution of India. Hence, there was no scope for transfer of respondent institution’s employees Provident Fund under the EPF Act. The fact and scope of the findings in **Sanatan Dharam Girls Secondary School (Supra.)** is distinguishable from the facts of the present case. In the instant case the EPF Act has been made applicable to Municipal Corporations by Notification bearing No. S.O. 30(E) dated 08.01.2011 and prior to that the regular employees of DMC were covered under the West Bengal Municipal (Employee's Death -cum-Retirement Benefits) Rules, 2003 and General Provident Fund under the West Bengal Municipal (Employees' Service) Rules, 2010, which does not have any overriding effect under Article 254(2) of the Constitution of India over the Notification issued on 08.01.2011 by the Parliament applying the EPF Act to the Municipality. Therefore, the decision in

the case of **Sanatan Dharam Girls Secondary School** in respect of its exemption has no application to the present case of DMC, where the coverage of the Act is in respect of the casual employees.

22. It is germane to note that when the corporation has its own scheme but restricts the application of the Provident Fund Trust Regulations to only the regular employees, and the Provident Fund Trust Regulations of the company were not applicable to all the employees of the company to satisfy the second test, then the said establishment or company cannot seek exemption from application of the EPF Act. I therefore hold that DMC, the appellant has failed to make out a case that it is excluded from the application of provisions of the EPF Act. In order to be excluded from the purview of the EPF Act, DMC must make provisions for Provident Fund either by including the casual Safai Karmacharis in their scheme with the regular employees or by making contribution under the EPF Act and Scheme, so that the object and spirit of the welfare legislation is not frustrated by a sectorial and partisan application of the Act to its employees.

23. Learned advocate for the respondent further relied on the decision of the Hon'ble Supreme Court of India in the case of **M/s. Pawan Hans Limited and Others Vs. Aviation Karmachari Sanghatana and Others [2020 (165) FLR 367 SC]**. On a perusal of the same it appears to me that, relying upon the decision in the case of **Regional Provident Fund Commissioner Vs. Sanatan Dharam Girls Secondary School [(2007) 1 SCC 268]** it was held that the twin test for exemption was not satisfied and the Hon'ble Supreme Court of India while upholding the decision of the Hon'ble High Court of Bombay in **W.P. No.325/2017** observed that the members of the respondent union were covered by the EPF Act and further directed that the members of the respondent union and other similarly situated contractual employees be enrolled under the Pawan Hans Employees Provident Fund Trust Regulations so that there is uniformity in the conditions of service of all employees of the appellant company.

24. Having considered the various laws laid down in the different cases in this matter it appears to me that though the Hon'ble Supreme Court of India in the case of **M/s. Yeshwant Gramin Shikshan Sanstha Vs. The Assistant Provident Fund Commissioner & Others [(2017) 5 SCC 579]**, observed that the appellant fulfilled the twin conditions specified in Section 16(1)(b) of the EPF Act and the same was exempted from the application for the provision of the Central Act, it was found by the Employees' Provident Fund Authority and the Employees' Provident Fund Appellate Tribunal, New Delhi, that sixteen part-time employees working at establishment of the appellant were not covered by the State Contributory Provident Fund scheme applicable to the other permanent employees of the establishment, as Rule 20 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 did not cover part-time employees working in the school, doing full time work. The Hon'ble Court observed that it was impermissible to invoke Central Act against the establishment of the appellant as Section 16 of the Central Act made it abundantly clear that the provisions of the Central Act will have no application to the establishment, if covered by one of the excepted categories provided therein. It held that the exemption is for the establishment as a whole and for all purposes, from the application of the Central Act. Once the establishment is covered by the excepted category specified in Section 16, to get exemption, it is incomprehensible that the provisions of the Central Act can be invoked against such establishment on the specious reasoning that few part-time employees working thereat were not covered by the CPF Scheme of the State Government, as applicable to rest of its employees. However, in the case of **Karaikal Municipality Vs. Union of India and Others [2020 SCC OnLine Mad 24536]**, cited by the respondent, the Hon'ble High Court of Madras relying upon the decision of **M/s. Pawan Hans Limited and Others Vs. Aviation Karmachari Sanghatana and Others [2020 (165) FLR 367 SC]**, noticed that the Hon'ble Supreme Court of India struck a different note while applying the same twin test as follows :

“ 7.2In our view, the Company does not satisfy the second test, since the members of the Respondent-Union and other similarly situated contractual workers were not getting the benefits of contributory provident fund under the PF Trust Regulations framed by the Company, or under any Scheme or any rule framed by the Central Government or the State Government. Consequentially, the exemption under Section 16 of EPF Act would not be applicable to the Appellant-Company.” It is, however, significant to note here that ultimately the employer in that case was required to extend provident fund benefits to the contractual workers not covered under the provident scheme that was applicable to the regular employees so that there is uniformity in the conditions of service of all employees in that establishment.”

25. Therefore, it emerges from the decision of the Hon'ble Supreme Court of India in the case of **M/s. Pawan Hans Limited and Others (Supra.)** that Notice was taken of the fact that some of the employees working in the establishment who were not covered by the prevailing scheme applicable for the regular employees for payment of Contributory Provident Fund and old age pension in accordance with the scheme or rule framed by the Central Government or State Government, governing such benefits, did not satisfy the second test under Section 16(1)(b) of the EPF Act. The object of the EPF Act, a welfare legislation, is for making provisions for the future of the workers on his retirement or for his dependents in case of his death. The definition of the word “employee” in Section 2(f) of the EPF Act is broad and inclusive in nature. It includes person who work in or in connection with the work of the establishment and gets wages directly or indirectly from the employer and includes regular and contractual employees. With such wide connotation of “employee” in the statute there cannot be any object of excluding some of them from the benefits of Provident Fund or old age pension which would result in discrimination and defeat the benevolent object of the statute. It is therefore imperative that every person employed in an

establishment or in connection with the work of the establishment should be entitled to his legitimate Provident Fund dues and old age pension. Therefore, no employer establishment can be exempted under Section 16(1)(b) or 16(1)(c) of the EPF Act, unless such benefit is available to its employees.

26. In view of such facts and circumstances I hold that the appellant establishment did not fulfill the twin test under Section 16(1)(c) of the EPF Act for its exemption from the application of the EPF Act.

27. The Regional Provident Fund Commissioner -II, Durgapur has acted consistent with the legal provision under the EPF Act by initiating a proceeding under Section 7-A of the EPF Act against the appellant establishment and after providing opportunity to the concerned parties, has lawfully decided the issue by assessing Provident Fund dues under Section 7-A of the EPF Act to the tune of Rs. 6,58,85,853/- in respect of Casual Safai Workers for the period from 08.01.2011 to September, 2017. In this appeal the appellant has challenged the applicability of the EPF Act against the establishment on the ground of its exemption under Section 16(1)(c) of the EPF Act but did not raise any objection against the correctness of the amount assessed towards Provident Fund dues of the Casual Safai Karmacharis from 08.01.2011 to September 2017. It appears from the impugned order dated 29.08.2019 that DMC did not raise any claim for its exclusion from the EPF Act under Section 16(1)(b) or 16(1)(c) of the EPF Act, before the Provident Fund authority nor did the appellant raise such ground in the Memorandum of Appeal. Having considered all materials and the points of contention during argument, I find and hold that there is no illegality in invoking the jurisdiction under Section 7-A and 8-F of the EPF Act by the Provident Fund authority for assessing and recovery of the said amount from Durgapur Municipal Corporation. In view of my above discussion, I hold that the impugned orders passed by Regional Provident Fund Commissioner – II, Durgapur, suffers

from no illegality and the same calls for no interference. The appeal is accordingly dismissed on contest.

Hence,

O R D E R E D

that the appeal under Section 7-I of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 is dismissed on contest. The impugned order dated 29.08.2019 under Section 7-A of the EPF Act and order dated 25.09.2019 under Section 8-F of the EPF Act are affirmed. Let copies of the Order be communicated to the parties under Rule 20 of the Tribunal (Procedure) Rules, 1997.

(ANANDA KUMAR MUKHERJEE)

Presiding Officer,
C.G.I.T.-cum-L.C., Asansol.