

(2001) 08 CAL CK 0007

Calcutta High Court

Case No: Writ Petition No. 13073 (W) of 1999

Central Model School,
Barrackpore

APPELLANT

Vs

The Regional Provident Fund
Commissioner and Others

RESPONDENT

Date of Decision: Aug. 7, 2001

Acts Referred:

- Constitution of India, 1950 - Article 14, 19, 21, 226
- Employees Provident Funds and Miscellaneous Provisions Act, 1952 - Section 1(3), 13(1), 14, 14(1), 14(2)
- Penal Code, 1860 (IPC) - Section 193, 196, 228

Citation: (2001) 3 CALLT 501 : (2002) 95 FLR 762

Hon'ble Judges: Pratap Kumar Ray, J

Bench: Single Bench

Advocate: Sadananda Ganguli, Tapan Dey and Koushik Roy, for the Appellant; S.C. Prasad, for the Respondent

Final Decision: Dismissed

Judgement

P.K. Ray. J.

1. In this writ application, the writ petitioner Central Model School, Barrackpore represented by Sri Tamal Maitra. Assistant Manager has challenged Notices dated 7th March, 1995 and 27th July, 1995 Issued by Regional Provident Fund Commissioner, West Bengal and Proceeding of 124 Criminal Cases as pending before the Sub-Divisional Judicial Magistrate, Barrackpore on Issue of non-payment of Provident Fund amount of the teachers and non-teaching staff, on several grounds and thereby prayed for necessary order quashing those criminal cases, the notice dated 7th March, 1995 whereby this school was allotted a sub-code and the notice whereby for non-payment of arrears dues of Provident Fund money by notice

dated 27th July, 1995, direction was given for prosecution, on contending inter alia, that since the period from year 1990 to 1993. the number of employees in the school were below 20, there was no applicability of the said Act and further on the ground that the writ petitioner was not heard at all regarding Issue of applicability of Act in respect of the School as well as the determination of amount in the proceeding u/s 7A of the Act. The petitioner has prayed the following reliefs accordingly :-

(i) A writ in the nature of Mandamus directing the Respondents to quash the purported Notice dated 7.3.95 (annexure "A") and the purported Notice dated 27th July, 1995 (annexure B) and the Notice dated 19.2.99 (annexure E).

(11) A writ in the nature of Mandamus directing thereby the respondents to get for calculation of the Provident Fund dues of the employees of the petitioner Institution since the year 1994 onwards by way of relinquishing the unlawful claim for the year 1990, 1991, 1992 and 1993. as for said period the petitioner Institution never reached the numeric strength of the employees for coverage of the Employees Provident Funds And Miscellaneous Provisions Act, 1952 and specially u/s 1(3) of the Act and to determine the actual arrears/ dues towards Provident Fund accumulation after due adjustment of the payment already made by the petitioner Institution.

(iii) A writ in the nature mandamus for quashing all the 124 Criminal cases as referred to in the Cause Title against the petitioner pending before the Sub-Judicial Magistrate Barrackpore.

(iv) An appropriate order be passed giving liberty thereby to the petitioner to effect payment of the arrears/dues towards the Provident Fund accumulation, if any, after due determination thereby by the respondents, by easy monthly instalments at the rate of Rs. 5,000/- per month.

(v) A writ in the nature of Prohibition restraining the respondents from going ahead with any recovery proceeding against the petitioner in view of the purported demands as set forth in the Notice dated 19.3.99 (annexure E).

(vi) An appropriate order be passed to stay all the 124 Criminal cases as referred to in the Cause Title and still pending before the Sub-Judicial Magistrate, Barrackpore against the petitioner.

(vii) A writ in the nature of Mandamus directing the Respondent to treat the petitioner Institution as an Independent institution and not being an unit of Kalayani Central Model School, Nadia u/s 2A of the Employees" Provident Funds and Miscellaneous Provisions Act, 1952.

(viii) A writ in the nature of Certiorari commanding the Respondents to certify and transmit all the relevant papers and documents relating to the Instant writ petition to this Hon"ble Court within certain stipulated period as would be deemed fit by this Hon"ble Court for rendering effectual justice to the parties to the writ petition.

(ix) Ad-interim order in terms of prayers (iv), (v) (vi).

(x) Any other relief or reliefs, order or orders the petitioner is entitle to in law and in equity.

2. This writ application has been opposed by filing Affidavit-in-Opposition by respondent No. 1,2 and 3 namely Regional Provident Fund Commissioner, West Bengal, Assistant Provident Fund Commissioner, Barrackpore, Local Office, District, North 24-parganas and Recovery Office, Employees Provident Fund Organisation, West Bengal contending inter alia, that the present school being a branch of Kalyani Central Model School under Angel Education Society and being a branch unit of the Mother Organization as admitted by the school authority, there was no necessity of any adjudication under Employees Provident Fund and Misc. Provisions Act, 1952 hereinafter refer to as said Act and there was no dispute raised about applicability of the said Act but on the other hand the admitted dues were agreed to be paid by school authority and some amount out of such claim has already been deposited, there is no cause of action to file the writ petition. By the opposition it is further contended that to wriggle out from the criminal proceedings, this writ application has been filed and writ Court will be slow to interfere with such criminal proceeding. It is further contended by the respondents that there was no violation of principle of natural Justice in adjudicating the matter namely determination of the amount under a proceeding u/s 7A of the said Act. It is further contended that there is delay and latches in filling the writ application and without availing the statutory remedy under law namely the appeal, the writ application has filed only to wriggle out from the criminal proceeding. The writ petitioner has filed the Affidavit-in-Reply reiterating the contention as made in the writ application and more particularly by submitting that up to the year 1993, the school had no liability to pay the Provident Fund money under the said Act as numerical strength of staff of the said school was below 20. It is contended that there was no finding that the school is a branch of Kalyani Central Model School and accordingly determination as made u/s 7A of the said Act is bad in law. It is further contended that the notice to comply with the provision of the Act directing to pay amount, when was given in the month of July 1995, but determination of quantum of the amount has been made long back in the year 1998, which is not legally sustainable. For adjudication of the matter by earlier order, the Court directed production of the records by the respondents and also granted them leave to file Supplementary affidavit annexing the relevant documents on issue of such proceeding under the Act. Supplementary Affidavit has been filed by the respondents annexing the documents and the petitioner was allowed to inspect the records and to submit from the records.

3. Hence, for adjudicating this matter, whether there was any violation of principle of natural Justice on the Issue namely applicability of the Act and fixation of the quantum of the arrear amount, the matter to be dealt with from the records of this case as produced as well as from the documents as annexed in the writ application,

the opposition and reply of the parties. The documents of this case has been scanned by this Court and the following facts has been revealed.

4. On 17th February, 1995, a meeting was held with the teaching staff of the school in presence of the representations of few other schools of the city and the Commissioner, Regional Provident Fund, Office at Calcutta, where the aggrieved teachers of this school placed their grievance of nonpayment of Provident Fund amount and non-introduction of such scheme as per the said Act in the said School in question. On 22nd February, 1995, the school was visited by one Mr. Rao, Assistant Commissioner under the Act and Mr. H. Bhattacharya, Inspector under the said Act. Said Mr. Rao submitted a report to the Regional Provident Fund Commissioner on 6th March, 1995 to this effect that on perusal of the school records, it was revealed that the school being a branch of Kalyani Central Model School, which was already covered under Provident Fund Act vide code No, WB/ 26011, hence, the present school being a branch of said school would be covered under said Act from the date of establishment of the same at Barrackpore. On 7th March, 1995 a further representation was submitted by nine teaching staff of the said school before the Authority under this Act upon giving the particulars of Income and expenditure of this school and thereby prayed for necessary relief on their entitlement of Provident Fund. In view of such condition, a notice dated 7th March, 1995 was issued, which is impugned in this writ application conveying the sub-code No. WB/ CA/26011-B in respect of this school. From this letter, it is revealed that the Regional Provident Fund Commissioner, West Bengal has considered the school as a branch of the original establishment under code No. WB/ CA/26011. The School Authority was directed to submit the particulars of ownership in form No 5A for necessary compliance. On 26th May, 1995 a compliance report was submitted by Enquiring Officer of the concerned Zone 27B wherefrom it reveals that the institution submitted (1) declaration as per proforma (2) 5A form as per proforma (3) submission of dues from May, 1991 (date of establishment to February, 1995). From this report, it further reveals that Institution by accepting such sub-code made the payments in diverse date by appropriate challans namely dated 28th April. 1995, 30th May, 1995 and 31st May 1995. It further reveals from said report that the Assistant Manager of this School that is the present petitioner signed "dues and payments submission" accordingly as well as produced that challans of State Bank of India showing the payments under the said sub-code regarding dues of the school on that Issue.

5. On 19th July, 1995 a further report was submitted by the said Enquiring Officer of Zone 27B giving details of the payments as made by the School on accepting the sub-code No. and accepting their dues without raising any dispute to that effect namely applicability of the sub-code in respect of the school and the liability to pay the Provident Fund dues from the date of establishment of the school. On 5th July, 1995, 12 teachers of this school submitted representation to the Regional Provident Fund Commissioner to know the fate of introduction of Provident Fund facilities

under the said Act. On 11th July, 1995 Regional Commissioner-in-charge, Barrackpore Local Office had a meeting with Sri D. John, Regional Provident Fund Commissioner (11), Sri Tamal Maitra, Assistant Manager of the School who is representing this writ petition on behalf of the school as petitioner, Sri S. Kar, Principal of the School. Minutes of the discussion was noted and it was signed by Sri Tamal Maitra who is representing the present writ application on 11th July, 1995 as well as by Sri Kar, Principal of the said School. Said Minutes of discussion is a relevant factor for adjudication of the grievance of the petitioner that they were not heard and the Principal of natural Justice was violated, is quoted in extenso :-

OFFICE OF THE REGIONAL PROVIDENT FUND COMMISSIONER WEST BENGAL: THE ANDAMAN & NICOBAR ISLANDS BARACKPORE LOCAL OFFICE 14 & 15 B.T. ROAD, T1TAGHAR, NORTH 24-P G S

No. WB/26011/BKP/CC/95-96/ Dated : 11.7.95

MINUTES OF THE DISCUSSION HELD ON 11.7.95

Present : Sri D. John. R.P.F., C(II)

Sri Tamal Maitra, Assistant Manager,

Sri S. Kar, Principal of the School.

The representative of the Estt. has stated that remittances due for the period 5/91 to 2/94 have been remitted to the Bank as per challans submitted.

No returns submitted so far as they have not collected the Forms from the office. Representatives have been told that forms are supplied free of cost from this office which may be collected on requisition and the returns crediting the Individuals member"s account should be prepared along with other returns like nomination form, F/9 etc. are to be submitted within 15 (fifteen) days.

Representatives have also promised to remit the dues in arrears, if any, after complete returns are prepared and submitted. The dues for 4/94 to 6/95 will be paid within three days.

(D. JOHN.)

REGIONAL COMMISSIONER.

IN-CHARGE, BARRACKPORE LOCAL OFFICE.

6. Inspection report was submitted on 10th July, 1995 and the same was received by Sri Tamal Maitra, who is representing the present petitioner in this writ application as his signature is appearing in this report From this report, it reveals that the Inspector visited the school on 10th July. 1995, the report in extenso is relevant for adjudication, accordingly quoted herein below:-

"Part II Inspection Report in M/s. Central Model School WB/26011-B at 23 Riverside Road, Barrackpore, 24-Parganas(N).

visited the Establishment to day the 10.7.95 for Inspection of P.F. records as per R.C.'s Inspection No. WB/26011A/BKP/CC/95-96, dt. 10.7.95. During Inspection Shri Tamal Maitra, Asstt. Manager, stated that all the relevant records are lying at the Kalyani Office being Main Centre. As such it is directed to produce the following records on 11.7.95 at 2 P.M. at the Chamber of Mr. D. John, Regional Commissioner directly:-

(1) P.P. Return and challan since coverage alongwith copy of coverage letter.

(2) Salary Register/Attendance Register.

(3) Vouchers.

(4) Challan for 6/95 also

(5) Copy of F/S.A.

Further P.F. Inspection Book and Eligibility Register to be maintained and shown to the undersigned on 17.7.95. It may also be noted that failure to appear before the Regional Commissioner on 11.7.95 with all the above records will be viewed seriously and necessary legal action for non-production of records will be taken against the management.

To,

Mr. Tamal Maitra,

Asstt. Manager.

Central Model School

Barrackpore."

7. By the letter dated 11th July, 1995, Regional Commissioner, In-charge of Barrackpore Local Office held that the compliance file in respect the present school under sub-code was not placed in the said office and accordingly prayed for necessary investigation. In this letter, a document annexing the details of remittances made by Central Model School, Barrackpore. under the said sub-code as signed by Sri Tamal Maitra, Assistant Manager was also filed. Details of remittances were in the pad of the School wherein it is mentioned that the school is an Unit of Angel Education Society. On 19th July, 1995, Regional Provident Fund Commissioner. West Bengal, in charge of Barrackpore, had written a letter to Regional Provident Fund Commissioner, West Bengal. Office at Park Street, intimating that remittance of certain dues as per details enclosed were made by the school and the school also had assured to pay the arrears. In this letter, it is further mentioned that the Central Model School, Kalyani allottee of Code No. WB/26011 has two branches, one is in

Barrackpore and another is in Barasat being allotted sub-code accordingly being No. WB/26011-A and WB/26011-B. In the form of Inspection report submitted by the Provident Fund Inspector, the said fact is revealed as submitted by Sri Daw, Enquiring Officer on 21st July, 1995. From the record, it further appears that in the return of ownership as send to the Regional Commissioner in Form No. 5A, school has not only accepted the sub-code No. but also has accepted its teaching strength and other particulars. The School has produced a document as received by the Inspecting Officer on 26th October, 1995 being a document of Rent Receipt of rupees sixteen hundred for the building of the present school for the month of March, 1991 wherefrom it reveals that the name of the school has been mentioned Kalyani Model School (Barrackpore Unit). This rent receipt was granted by the owner on 18th April, 1991. Principal, Mr. Kar has filed a document in the School Pad accepting the fact of setting up of the school from April, 1991, that the school is under Angel Education Society, Kalyani, Nadia and total number of employees being 27. Under such state of affairs from the record it further reveals that the present institution was served with a show cause notice on 27th July, 1995 calling upon them to show cause as to why prosecution u/s 14(la), 14(lb) and 14(2) read with Section 76B should not be Initiated for violation to remit the dues and the statutory returns, this is also impugned notice in this writ application.

8. On 8th August, 1995, report was submitted by the Enquiring Officer of the said Zone. On the basis of the report, direction was given by Regional Provident Fund Commissioner, Barrackpore Local Office, on 9th August, 1995 to take legal step since the school concerned did not remit the dues and also failed to file the returns. There after, many returns were submitted regarding dues as was paid for subsequent years. Ultimately the order dated 14th December, 1999 was passed by the Regional Provident Fund Commissioner, West Bengal, determining the dues of such amount u/s 7A of the concerned Act, after hearing, Sri Tamal Maitra, Assistant Manager and Dr. Sukumar Kar, Principal of the school, who appeared on 8th December. 1998. From the order, it reveals that on behalf of the School Authority, it was submitted that the payment of Provident Fund, Family Pension and Insurance Fund Contributions and the Administrative charges towards said fund for the months of September, 1990 to May, 1995 and March. 1996 to August, 1998 was not made by the Employer Central Model School, Barrackpore and amount of Rs. 2,38,895 was due. Mr. Pal, Enquiring Officer appointed u/s 13(1) of the said Act, on perusal of the documents about part payments, confirmed said amount as payable by the school and such amount was determined on the basis of the verification of reports. Recovery proceeding accordingly was directed to be initiated by reference of the same to the Recovery Officer under the said Act upon sending the documents u/s 8C of the said Act, giving details outstanding amount. Such requisition of certificate was send to Regional Provident Fund Commissioner (II) as well as Officer In-charge, Barrackpore SAO, Titagarh. West Bengal on 9th March, 1999.

9. Hence, from the records it appears that the School Authority accepted and agreed not only the allotment of sub-code No. by accepting the fact that present school is a branch of Central Model School, Kalyani, but also no dispute was raised about the applicability of said Act for the period 1990-93. Since the decision has already been accepted without raising any dispute about the liability of payments of the dues under the said Act, which is a social welfare legislation, since the establishment of the school at Barrackpore as a Unit of the School at Kalyani, the contention as raised by the learned Advocate of the petitioner that there was no adjudication of the applicability of the said Act has no basis. In the Instant writ application, Sri Tamal Maitra is representing the school as a petitioner whereas from the records it reveals as already narrated in the earlier paragraphs that said Sri Maitra and Mr. Kar, the then Principal placed all documents to the Officer concerned for verification and accepted the matter about applicability of the sub-code herein in favour of the school, on consideration of school as a branch and/or unit under the main school Kalyani. Nowhere any dispute since as raised but dues has been accepted and time prayed for payments on accepting liability, hence, there was no violation of any provision of the Act as alleged. The submission of the learned Advocate of the petitioner is that in the year 1995, notice was Issued for taking legal steps whereas the determination of amount payable u/s 7A of the said Act was made in the year 1998, which is bad in law. On that submission, the relevant provision of the Act is to be looked into. Section 7A of the Employees Provident Fund and Miscellaneous Provision Act hereinafter refer to as the said act is quoted hereinbelow in extenso:

"7A. Determination-of moneys due from employees.--The Central Provident Fund Commissioner, any Additional Central Provident Fund Commissioner, any Deputy Provident Commissioner, any Regional Provident Fund Commissioner, or any Assistant Provident Fund Commissioner may, by order,--

(a) in a case where a dispute arises regarding the applicability of this Act to an establishment, decide such dispute; and

(b) determine the amount due from any employer under any provision of this Act, the Scheme or the [Pension] Scheme or the Insurance Scheme, as the case may be.

and far any the aforesaid purposes may conduct such inquiry as he may deem necessary.

(2) The Officer conducting the inquiry under Sub-section (1) shall, for the purposes of such inquiry, have the same powers as are vested in a Court under the Code of Civil Procedure, 1908 (5 of 1998), for trying a suit in respect of the following matters, namely-

(a) enforcing the attendance of any person or examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavit;

(d) issuing commissions for the examination of witnesses:

and any such inquiry shall be deemed to be a judicial proceeding within the meaning of Section 193 and 228, and for the purpose of Section 19G, of the Indian Penal Code (45 of 1860).

(3) No order [...] shall be made under Sub-section (1), unless [the employer concerned] is given a reasonable opportunity of representing his case.

[(3A) Where the employer, employee or any other person required to attend the Inquiry under Sub-section (1) fails to attend such Inquiry without assigning any valid reason or falls to produce any document or to file any report or return when called upon to do so, the officer conducting the Inquiry may decide the applicability of the Act or determine the amount due from any employer, as the case may be, on the basis of the evidence adduced during such inquiry and other documents available on record.]

[(4) Where an order under Sub-section (1) is passed against an employer ex parte, he may within three months from the date of communication of such order, apply to the officer for setting aside such order and if he satisfies the officer that the show cause notice was not duly served or that he was prevented by any sufficient cause from appearing when the Inquiry was held, the officer shall make an order setting aside his earlier order and shall appoint a date for proceeding with the inquiry:

Provided that no such order shall be set aside merely on the ground that there has been an irregularity in the service of the show cause notice if the officer is satisfied that the employer had notice of the date of hearing and had sufficient time to appear before the officer.

Explanation.--Where an appeal has been preferred under this Act against an order passed ex parte and such appeal has been disposed of otherwise than on the ground that the appellant has withdrawn the appeal, no application shall lie under this sub-section for setting aside the ex parte order.

(5) No order passed under this Section shall be set aside on an application under Sub-section (4) unless notice thereof has been served on the opposite party.]"

10. Hence, without taking any aid of Interpretation theory as laid down in the book of Statutory Interpretation, it is clear that u/s 7A, applicability of the Act is not determined by any proceeding u/s 7A but such Act is applicable by other provision of the Act itself. u/s 7A, what is done is only determination of quantification of the amount, this point has been decided by the apex Court in the Judgment M/s. S.K. Nasruddin Beedi Merchant Limited v. Central Provident Fund Commissioner and Ors., reported in 2001 Lab IC 730 (SC). Furthermore, it is now a settled legal position that the present Act being a piece of social welfare legislation to protect the interest of employee's concerned working in the establishment, u/s 1 sub-section (3), the enforceability of the Act and the scheme does not depend on decision taken by the

department. It is the employer's duty to put the scheme in operation immediately after the Act becomes applicable to any Factory/ Establishment and to start making contributions of both employer's share and employee's share to the fund and to deduct employee's share from their salaries. The employer is not permitted to wait till the notice of demand is received from the Provident Fund Commissioner. The enforceability of the Act does not depend upon discovery made by the departments. The reliance is placed to the Judgment in the case [N.K. Industries \(Private\) Ltd., Kanpur Vs. Regional Provident Fund Commissioner, U.P.,](#) .

11. Furthermore, it is now a settled legal position that as soon as a communication is sent to the employer informing him of the application of the Act and the scheme to his establishment, the employer is liable not only to remit contributions involving his share and share of each employee to the Provident Fund but also to pay administrative charges, such view is fortified by the Judgment of the case [Ramanujam Press represented by Ramanujam Press Vs. The Regional Provident Fund Commissioner, Madras,](#) . In the instant case, from the record it appears that in the year 1995 prior to allotment of sub-code by holding the present school as a unit under Kalyani Central Model School, the Inspector enquired the matter, perused the documents of the school personally and in such inspection, the present petitioner who is represented by Sri Tamal Maitra was present and he rendered all cooperation. No objection or dispute was raised about the applicability of the said Act on the plea as now taken in this writ. On the contrary, certain amounts as were remaining dues from the year 1990 were already paid by proper Challans. In that view of the matter, it is clear that the present writ petitioner since participated in all the enquiries as held and signed the documents thereto as appearing from the records long back in the year 1995, accepting the liability under the present Act, cannot now turn round by filing this writ application that they were not heard. It is complete lie in the mouth of the present petitioner to submit such statement in this Court of law. Since from the records, it is proved that writ petitioner was duly heard through his representative and such representative Sri Tamal Maitra acted in pursuance of such by accepting the sub-code No. as allotted in respect of the school and thereby remitted certain amount as dues, the contention as raised in the writ application accordingly is not tenable and such contention is false submission in this Court of law and nothing but a false statement to mislead this Hon'ble Court on this point. In the writ application, petitioner contended in paragraph 9 that he has already deposited certain amounts relating to the years 1991 to 1995 though with a rider that in view of the undue pressure and threat, petitioner was bound to pay it. But in paragraph 9, nowhere it is stated who pressurized the petitioner and how. Further in paragraph 12 of writ petition, it has been admitted by the petitioner in its language "without raising any dispute had gone for depositing a sum of Rs. Seventy four thousand and four hundred fifty one out of the total demand for sum of Rs. 2 lakh 32 thousand 895 as is evident from the purported notice dated 19.3.99". In this paragraph though it is stated that the petitioner was compelled to deposit under

threat but nowhere it has been stated giving full particulars of the threat, the names of the parties who had threatened the petitioner and furthermore the date of such threat and other incident. Mere statement without any particulars of the threat and without making those persons as a party in the proceeding cannot be believed by this Court. More so when from the documents and records it appears that Sri Tamal Maitra not only accepted sub-code but signed all the documents and appears long back in the year 1995 and for the first time in the writ, he has submitted story of threat. The conduct of Sri Maitra cannot be believed by this Court. In view of the documents as has been placed before this Court, in the supplementary Affidavit and in the Affidavit in Opposition, which clearly speaks of the fact that the writ petitioner accepted the findings made by the Enquiring Officer on perusal and inspection of the documents upon appearing in the School that the present school is a unit of another school namely Kalyani Central Model School and accordingly the Act was made applicable by providing sub-code and such was never objected to. The applicability of the Act may be a question when any dispute is raised, the language of Section is clear to that effect. In the instant case it appears from the record that no dispute was raised about the applicability of the Act and for the first time in the writ application, such dispute is being raised after accepting the notice by which sub-code was allotted and remitting the amounts by different challans on accepting the responsibility under the Act. Hence, the principle of estoppel is squarely applicable in this case besides the applicability of doctrine of misrepresentation. This writ petition has been filed with an oblique purpose to wriggle out from the criminal proceeding and the writ petitioner very purposely intended to use the machinery of this High Court by filing this writ application. The petition accordingly is a motivated and mala fide petition to obstruct the process of law.

12. The notice for prosecution was issued long back in the year 1995 for non payment of the dues and subsequently when amounts were deposited, a final determination was made relating to dues in the year 1998 and accordingly the contention of the learned Advocate that prior to 1998 there was no determination of the applicability of the Act is not maintainable even factually. Since in this writ application, the petitioner himself has submitted some documents which shows that petitioner accepted the applicability of the Act and acted in terms thereof by depositing certain amount but became defaulter in respect of demands of full amount with reference to the amount under the said Act, which is a Social Welfare Act and dues are required to be paid for the benefit of the employees concerned, this Court will not interfere in this writ application. This writ application, furthermore, has been filed after long lapse of delay that is after 4 years since the first notice was issued allotting sub-code and thereafter intimating about payments and the criminal liability for such non-payment. It is settled legal position that such delay for long 4 years is very fatal in respect of the present case is concerned as the writ petitioner deliberately and purposefully did not pay the amount of the employees concerned covered under the present Act, which is a social welfare Act.

This writ application accordingly is liable to be dismissed and rejected even on the ground of delay. Reliance is placed to the Judgments in the case [Kamini Kumar Das Choudhury Vs. State of West Bengal and Others,](#) [Ashok Kumar Mishra and Others Vs. Collector, Raipur and Others,](#) [Hari Singh and Others Vs. State of U.P. and Others,](#) . Furthermore, there is no such explanation of such long delay of 4 years in challenging the notices of the year 1995 and a Judgment of the apex Court is squarely applicable in this field to reject the application on the ground of delay being the Judgment passed in the case Ashok Kumar Mishra (supra) (paragraph 7). Though Limitation Act in fact has no applicability in a proceeding under Article 226 of Constitution of India but the limitation to file a suit is taken into account as a reasonable standard for filling such grievance in a writ application in terms of the judgment in the case [State of Madhya Pradesh Vs. Bhailal Bhai and Others,](#) . In different Judgments as referred to above the apex Court accordingly rejected the writ application on the ground of delay and did not interfere with the decision as impugned. In the Instant case, the petitioner has challenged the notices dated 7th March, 1995 and 27th July, 1995 by which the school was allotted with the sub-code No. under this Act and notice was given to pay the statutory payments falling which to face the criminal consequences. But writ application has been affirmed on 2nd July, 1999 that is after 4 years. Hence, on the ground of delay, this application is also not maintainable. From the records, it appears that long back in the year 1995, the liability of the writ petitioner was fixed and such liability was accepted by the petitioner and particularly by the present person who is representing the writ application by signing different paper. After accepting the liability under the Act and making part payments, the writ petitioner in this writ application has completely changed stand by submitting that no determination about applicability of the Act was made. Writ petitioner accordingly estopped to submit such, applying the basic principle of doctrine of estoppel as well as applying the test of approbate and reprobate principle. This point has already been settled by the different judgment of the apex Court by catena of decisions. Reliance is placed to the judgments in the case [State Bank of Patiala and others Vs. S.K. Sharma,](#) [R.N. Gosain Vs. Yashpal Dhir,](#) [New India Assurance Co. Ltd. Vs. Smt. Shanti Bai and others,](#) . Another fact to be considered that after the Criminal Proceedings were Initiated totaling 124 in number, the writ petitioner has filed this writ application for quashing those Criminal Proceedings. It is a settled legal position now that the writ Court will not interfere with the Criminal Proceeding unless the parameters of such interferences are fulfilled. The factors as would allow the writ Court to Interfere with has been broadly discussed and expressed in the Judgment in the case [Dukhishyam Benupani, Asstt. Director, Enforcement Directorate \(FERA\) Vs. Arun Kumar Bajoria,](#) arose out of Foreign Exchange Regulation Act upon relying the judgment in the case [Enforcement Officer, Ted, Bombay Vs. Bher Chand Tikaji Bora and Another,](#) . Applying the factors as prescribed by the apex Court, in this writ application, nothing has been available by which this Court will Interfere with the Criminal Proceedings as have been initiated for violation of the Statutory Provision as laid

down under the present Act. The conduct of the writ petitioner establishes the fact that only to wriggle out from such criminal cases, writ petitioner has filed this writ application. Hence, this writ application cannot be entertained by this Court. Considering the basic law namely the principle to apply the doctrine of Judicial review, there is no element and/or factors Involved in this case to Interfere with the impugned order by exercising the power under Article 226 of the Constitution of India. It is a settled legal position now that writ Court will not interfere by exercising the power of judicial review until and unless the specific case is made out on Infringement of any legal right and/or violation of any statutory provision of law and/or Fundamental Rights. In the instant case the violation of natural Justice as set up factually has no basis as it appears not only from the records placed by the respondents but from Affidavits and counter Affidavits filed by the parties. Hence, there is no violation of Fundamental Rights, furthermore, the writ petitioner has no legal right which has been infringed. Existence of a legal right and a consequential legal duty to a statutory body is the sine qua non of maintainability of a writ of mandamus. Both the two elements are absent in this case, reliance is placed of the aforesaid principle to the judgments [Mani Subrat Jain and Others Vs. State of Haryana and Others,](#) , [State of Kerala Vs. Smt. A. Lakshmikutty and others,](#) and [State of U. P. and others Vs. Harish Chandra and others,](#) . Furthermore, it is a settled legal position that the writ cannot be issued to violate the law or to act in violation of the law. Reliance is placed to the Judgment of LIC case reported in AIR 1994 SC 2146. In that view of the matter this Court is not inclined to exercise the power of Judicial review. The applicability of such doctrine of Judicial review has further been clearly stated by De Smith in the book of Judicial Review, 5th Edition at page 549, which is quoted in extensor herein:

"We now turn to the third general ground of review, which is variously known as unreasonableness or, Increasingly, and sometimes as the abuse of power. Under this ground the question asked is not whether the decision-maker strayed outside the purposes defined by the governing statute (the test of "illegality"), not whether the decision was procedurally unfair (the test of "procedural propriety"). The question here is whether the power under which the decision-maker acts, a power normally conferring a broad discretion, has been improperly exercised.

The terms employed to Identify this ground of review are imprecise and misleading. The famous formulation by Lord Greene in the *Wednesbury* case," that the Courts can only Interfere if a decision "is so unreasonable that no reasonable authority could ever come to it", attempts, albeit imperfectly, to convey the point that judges should not lightly interfere with official decisions on this ground. Its tautological definition, however, falls to guide us with any degree of certitude.

"Unreasonableness" is sometimes used to denote particularly extreme behaviours, such as acting in bad faith, or a decision which is "perverse", or "absurd-implying that the decision-maker has "taken leave of this senses". In the *GCHQ* case, Lord

Diplock preferred to use the term "irrational", which he described as applying "a decision which is so outrageous in its defiance of logic or accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it. This formulation is at least candid in its acknowledgment that Courts can employ both logic and accepted moral standards as criteria by which to assess official decisions, but it does not assist in elucidating any more specific categories of legally unacceptable substantive decisions. In addition, as has been recently pointed out, the term irrationality has the drawback that it casts doubt on the mental capacity of the decision-maker, whereas many decisions which fall foul of this head have been coldly rational. Recent attempts to reformulate the ground as denoting "a decision so unreasonable that no person acting reasonably could have come to it", or a decision which elicits the exclamation: "My goodness. That is certainly wrong" perhaps help to give an indication of the flavour of the conduct which qualifies as being within the concept of unreasonableness, but are no more helpful as guides to its precise parameters."

13. Hence, it is clear that only on the ground of unreasonableness, Irrationality, illegalities, absurdity and have procedural Impropriety, such doctrine to be applied. In the Instant case no such case has been made out by which Impugned decision to be termed as unreasonable, unfair, irrational and/or in violation of procedural law. Reliance is placed to the judgment in the case [Tata Cellular Vs. Union of India](#), .

14. Considering the entire factual matrix of this case nowhere it is found that the respondent acted arbitrarily or Irrationally. Considering all the materials factors accordingly this Court is of the view that there is nothing in this writ petition by which this Court will interfere and accordingly this writ application is dismissed upon imposing a cost of 100 G.M. to the petitioner in view of his misrepresentation before this Court, that petitioner was not heard by authority.

15. Application dismissed.