Sikkim High Court State Bank Of Sikkim Employees' ... vs State Of Sikkim And Ors. on 27 September, 2000 Author: A Deb Bench: A Deb ORDER Anup Deb, J. 1. By filing this writ petition, the petitioners have inter alia prayed for a writ or order or direction or declaration that the Contributory Provident Fund (in short CPF) Accounts of the employees of State Bank of Sikkim (in short the Bank) shall not be transferred to the Central Provident Fund authorities under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as EPF and MP Act, 1952) and a writ or order for direction or declaration that CPF Accounts of the employees of the Bank shall be governed by provisions of the State Bank of Sikkim Employees' Provident Fund Rules, 1978 (CPF Rules, 1978) and not by the provisions of EPF and MP Act, 1952 and various schemes made thereunder. 2. The petitioners' case is that the petitioner No. 1 is a registered Association of the Employees of the Bank tearing registration No. 118 of 1983. The petitioner No. 2 is the General Secretary of State Bank of Sikkim Employees' Association and an employee of the Bank. The Bank having its registered and head office at Gangtok was constituted and established under the State Bank of Sikkim Proclamation, 1968 (hereinafter referred to as the "Proclamation"). Initially, the Bank had 20 employees and presently there are 318 regular employees working in its 21 Branches throughout Sikkim. The Bank is a body corporate. The Government of Sikkim has 80% share in the Bank. The Bank functions under the administrative and financial control and guidance of the Finance Department of the Government of Sikkim. The Managing Director and the other Directors are the State Government officials. Clause 47(2)(1) of the Proclamation empowers the Board of Directors of the Batik (hereinafter referred to as the Board) to make regulation in respect of establishment and maintenance of provident fund or other benefit funds for the employees of the Bank and in pursuance to the aforesaid clause, the Board has framed the CPF Rules, 1978 which came into force with effect from July 1, 1978. The C.P.F. Rules, 1978 has been amended by the Board and such amendment became effective from February 1, 1999 through a Circular dated March 29, 1999 (Annexure P-3 to the writ petition). Rules 13 to 16 of the CPF Rules, 1978 inter alia provide that each member or employee shall subscribe to the Fund an amount equal to 8.33% of the salary every month. Each member may subscribe an additional amount to the fund but the sum total of the compulsory subscription and voluntary subscription shall not exceed 12% of an employee's monthly salary. The Bank shall subscribe contribution equal to 8.33% of the monthly pay of an employee. The members' contribution and Bank's contribution shall be credited to individual account of the members. Interest thereon will be paid by the Bank @ 12% per annum and if any member is in the service of the Bank for 10 years or attains the age of superannuation, he shall be entitled for his own contribution and Bank's contribution with interest accrued thereupon. At present, the employees are contributing at the said amended rate of 10% of the basic pay and 10% of their Special Banking Pay in their CPF Account. Employees who have already completed more than 10 years service have already been given non-refundable money from the CPF. However, this facility is not available under the Central Government Provident

Fund Scheme 1952. The salary of the Bank employees was revised and refixed with effect from January 1, 1996 and the arrears received by each employee against such refixation have been deposited in their respective CPF Account. The trustees of the Bank in accordance with Clause 18 of the Rule have made provision for fixed deposits and accordingly the arrears of each member have been put to special fixed deposit account and interest on such account is quite high and within a span of 5 1/2 years, the members shall get double the money invested in each account and this is a special benefit under the CPF Rules, 1978. The amount received by each member against such deposit shall be more than Rs. 35,000/- which the central authorities pay towards the Deposit Linked Insurance Scheme. If any amount is received in future, such money shall also be kept in Fixed Deposit by the Bank, as a result, its employees shall be benefited for more than what the Central Provident Fund authorities shall pay and in addition to this, the management of the Bank has also extended attractive facilities of gratuity payable to the bank employees. The Central Government has no such beneficial scheme to pay as Gratuity. The EPF and MP Act, 1952 has been enforced in the State of Sikkim with effect from November 1, 1955. The provisions of Employees' Family Pension Scheme, 1971 and Employees' Deposit Linked Insurance Scheme, 1976 have been enforced with the enforcement of the EPF and MP Act, 1952. The petitioners alleged that they have come to learn that the Regional Provident Fund Commissioner, respondent No. 4, issued some letters and notices to the State Bank of Sikkim, inter alia, directing the Bank to transfer the CPF Account of each employee of the bank to the control of the Central Regional Provident Fund Account at Siliguri in view of the mandates in the Provident Fund Scheme and the EPF and MP Act, 1952. The petitioners have also come to learn that all steps regarding transfer of the CPF Accounts of the members of the petitioners' association are almost complete. The petitioners contacted the Managing Director of the Bank and other authorities of the State Government and expressed that they are not willing to transfer their CPF Accounts with the Central Provident Fund Office and they have been informed by the Bank that steps for transfer of CPF account have been taken by the Central Regional Provident Fund Commissioner at Siliguri to avoid any misuse of the hard earned money of the employees of the Bank in order to protect the interest of the employees and the petitioners submit that their interest is well protected so far as their CPF is concerned. The Bank has been looking after the interest of its employees. The petitioners placed reliance upon Section 16 of the EPF and MP Act, 1952 and submitted that the Act does not apply to any establishment set up under any Central or Provincial or State Act and whose employees are entitled to the benefits of CPF or old age pension in accordance with any scheme or rule framed under that Act governing such benefits. The petitioners submitted that the Proclamation is a law and is protected under Article 371-F(k) of the Constitution of India and it is a pre-merger law and the Bank is an establishment set up by the Proclamation, which is an Act and a law in force in Sikkim. It is further stated that the employees of the Bank are getting better facilities than the benefits to be given under the EPF and MP Act, 1952 and schemes framed under that Act. The petitioners have already stated various benefits drawn by them under CPF Rules, 1978 and they are getting more facilities under the CPF Rules, 1978 framed by the Bank. In paragraph 25 of the writ petition, the petitioners stated as follows: "25. That the petitioners have already stated in the foregoing paragraphs about the benefits drawn by them under the CPF Rules, 1978 framed by the Bank. The petitioners state that they are getting more facilities under the Provident Fund Rules, 1978 framed by the Bank. Further, the State Government has already assured the petitioners to give benefits of pension. They are already getting Gratuity, which is not available under the EPF Act, 1952. The employees shall get more than Rs. 35,000/-which is given against Deposit Linked Scheme under the CPF Act, 1952. The contribution of the Bank towards the CPF Account is also in higher side. Moreover, the State Bank authorities shall not claim any service charge from the account of the employees whereas service charge is claimed by the Central Provident Fund Authorities. There are other benefits under the Provident Fund Rules of the Bank which are not available with the Central Provident Fund Scheme, 1952." 3. The petitioners stated that the provisions of the EPF and MP Act, 1952 and the schemes made thereunder are not applicable in the case of the employees of the Bank in view of the provisions of Section 16 of the said Act. The Bank is an establishment set up under the Proclamation, which is a law protected by Article 371-F(k) of the Constitution of India and it is an Act of the State. The CPF Rules, 1978 is made under the said Proclamation and as such, under Section 16 of the Act of 1952, the employees of the Bank are not covered under the EPF and MP Act, 1952 and the schemes made thereunder. 4. The respondent Nos. 2 and 3 filed an affidavit-in-opposition. It is stated that the Bank is a body corporate constituted under the Proclamation or Chogyal dated June 24, 1968 and under the financial and administrative control and superintendence of its Board, The general superintendence and direction of the affairs and business of the Bank is vested to its Board subject to certain provisions of the Proclamation. The Bank follows its own rules and regulations but the matters not dealt and covered by its own rules are dealt and disposed off following common rules, principles of. natural justice, fair play and equity. So far as the pay and allowance applicable to the employees of the Bank are concerned, the Bank adopts the rules and regulations of the State Government. The rate of interest at present applicable to the CPF Account of the employees are fixed at 12% per annum and it is stated that this can be varied to such other rates as may be notified by the respondent Bank. These respondents admitted that the employees are contributing at the amended rate of 10% of the basic pay and 10% of their special banking pay in their CPF Account. It is also admitted that the employees who have already completed more than 10 years of service are given non-refundable money from their Provident Fund. The Trustees of the Bank had made provisions for fixed deposit and arrears of the members are put to cumulative deposit scheme. It is stated by these respondents that enquiry under Section 7-A of the EPF and MP Act, 1952 for determination of Provident Fund/Family Pension Fund/Pension Fund and Insurance Fund dues from the employers from November, 1995 to August, 1999 has been initiated by the Regional Provident

Fund Commissioner pertaining to salary/wages of the employees to calculate the dues for the said period. It is stated by the respondents that the CPF Rules, 1978 amended vide Office Order No. SBS/GTK/(HQ)27/95/765 dated May 12, 1995 state each member staff shall subscribe to the fund an amount equal to 10% of the salary and the respondent Bank subscribed contribution equal to the aggregate amount of the monthly subscription of the members. The member staff may subscribe an additional amount to the fund but sum total of voluntary subscription and compulsory subscription shall not exceed 12% of the monthly salary. The trustees of the fund, who will have control over the fund, shall time to time invest the fund in fixed deposit account with the Bank and interest earned from such fixed deposit shall be credited to the account of the individual member staff. 5. Respondent No. 4, the Regional Provident Fund Commissioner, contested the writ petition by filing counter-affidavit. It is stated by this respondent No. 4 that "as per provisions of Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and the Schemes framed thereunder, the rate of contribution payable by the employee is compulsorily. @ 12% of the basic wages, dearness allowance and retaining allowance, if any, and an equal contribution is payable by the employer in respect of such employee. The rate of interest is credited @ 12% p.a. on the monthly recurring balance basis. Moreover, the Provident Fund members are entitled to get the non-refundable money towards the total accumulation of their contribution as well as the employee's share of contribution at any time. There is no question of completion of ten years service or superannuation. In addition to this, the members are eligible for non-refundable advances as provided under Para 68-B to 68-NN of the E.P.F. Scheme, 1952." The money of E.P.F.p. are invested as per guidelines issued by Ministry of Finance, Government of India. The amount up to a ceiling of Rs. 35,000/- which a member/employee gets towards the said scheme is an additional benefit/bonus apart from E.P.F. accumulation in his account and for the same the employees have been nothing to contribute from their monthly salary. The EPF Scheme 1952 has no connection with the Scheme under the Gratuity Act and this is a separate Act framed by the Government of India. "The EPF and MP Act, 1952 has provisions for withdrawal from the fund at any time without any hindrance as and when the exigencies are/shall be arisen by the members and the same is non-refundable as prescribed under paragraph 68-B to 68-NN of the EPF Scheme 1952." The EPF and MP Act 1952 has provided the pensionary facilities/benefits to the members and their families under Employees Pension Scheme 1995. It is stated that these Schemes are beneficial for the employees as per provisions of the EPF and MP Act, 1952 and the pension scheme framed thereunder, the employees/members are not to contribute any share from their salary towards the pension fund. Such contribution @ 8.33% per month is accumulated in the pension account of each member from the share contributed by the employer and not the employee. It has been stated that subject to the provisions of Section 16 of the EPF and MP Act, 1952 and the Scheme framed thereunder, the classes of establishment to which the said Act had been made applicable are categorically defined and classified under Section 1(3)(b) of EPF and MP Act, 1952. The provisions: contained in

Section 16 of the EPF and MP Act, 1952 do not relate to the Bank. Banks like, State Bank of Sikkim fall under the provisions of Section 1(3)(b) of the EPF and MP Act, 1952 as per Annexure-I of the Schedule head to which the Act has been extended and made applicable. The provisions of EPF and MP Act, 1952 came into force in the State of Sikkim with effect from November 1, 1995. As per provisions of the EPF and MP Act, 1952 and the scheme framed thereunder, the employees are provided more facilities and benefits than the benefits to be given under the Employees' CPF Rules, 1978 framed by the Bank. By analysing the provisions of EPF and MP Act, 1952 and the Scheme framed thereunder, respondent No. 4 submitted and indicated the benefit available to the members/employees. The Gratuity Act is not related to the EPF and MP Act, 1952 and the various schemes framed thereunder. The Gratuity Act is a separate Act made by the Government of India and the same is adopted by the establishment individually. The employees of the Bank come under the purview of the EPF and MP Act, 1952 as per provisions of Section 1 (3)(b) of the said Act and Para 1(3)(b)(iii) of the Scheme framed thereunder. In comparison to the State Bank of Sikkim Employees' CPF Rules, 1978, the contribution by the employees and the employer under the EPF and MP Act, 1952 is on the higher side. The State Bank of Sikkim is required to deposit the current dues in the account lying with the respondent at Siliguri. The respondent No. 4 in exercise of the powers under Section 7-A of the EPF and MP Act 1952 has already initiated proceedings against the State Bank of Sikkim for determination of P.F. and allied dues for the period from November, 1995 to August, 1999. 6. Heard Mr. A. Moulik, learned counsel for the petitioner, Mr. S. P. Wangdi, learned Advocate General for respondent No. 1 and Mr. J. P. Pawa, learned counsel for respondent No. 4. 7. Mr. Moulik has pointed out to the paragraph 16 of the counter-affidavit of respondent No. 4 and submits that paragraph 22 of the writ petition is correct and partially admitted. In paragraph 16 of the counter-affidavit, respondent No. 4 had admitted the relevant portion. i.e. Clauses (b) and (c) of Sub-section (1) of Section 16 of EPF and MP Act, 1952. Respondent No. 4 further stated that subject to provision of Section 16 of the Act and Scheme framed thereunder, the classes of establishments to which the said Act has been made applicable are categorically defined and classified under Clause (b) of Sub-section (3) of Section 1 of EPF and MP Act, 1952. Mr. Moulik argues that Clause (c) of Sub-section (1) of Section 16 of EPF and MP Act, 1952 provides that the Central Provident Fund Act, 1952 shall not apply 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 rules framed under that Act governing such benefits. Sub-clause (3) of Clause (1) of the Employees Provident Funds Scheme, 1952 provides that subject to the provisions of Sections 16 and 17 of EPF and MP Act, 1952 this scheme shall apply to all factories and other establishments to which the Act applies or is applied under Sub-section (3) or Sub-section (4) of Section (1) or Section 3 thereof. The Bank is a creature of a Proclamation of the Chogyal dated June 24, 1968 and as such, the proclamation is a pre-merger law duly protected under the Constitution and therefore, tantamounts to an Act passed by a Legislature. Therefore, the Bank falls within the term 'establishment' set up under any Central, Provincial or State Act. The CPF Rules, 1978 is a rule made by the Board of the State Bank of Sikkim under Section 47(2)(1) of the said Proclamation of 1968. The Provident Fund Rules have made provisions for employees of the State Bank of Sikkim to get benefits of Contributory Provident Fund under the said Proclamation. Thus the State Bank of Sikkim falls under the purview of the Section 16(1)(c) of EPF and MP Act, 1952 and therefore, the employees cannot be governed by EPF and MP Act, 1952 or by any other scheme made thereunder. Under Clause 1, Sub-clause (3) of the Employees Provident Funds Scheme, 1952 only those establishments which do not fall within the purview of Section 16 of EPF and MP Act, 1952 shall be governed by the Scheme of 1952. Therefore, the submission of respondent No. 4 are not tenable in the present case. Mr. Moulik further submits that the word "establishment" mentioned in Section 16 of EPF and MP Act, 1952 covering the Bank as an establishment. Mr. Moulik has pressed reliance on the decision in the case of K. Gopalan v. Union oj India, reported in 1973 Lab IC 287 (Delhi). 8. Mr. J.P. Pawa, learned counsel appearing for respondent No. 4 argues that the provisions of Section 16 of EPF and MP Act, 1952 is not attracted in the case of the employees of the Bank. The State Bank of Sikkim is a class of bank/establishment which has been included in the schedule head under Clause (b) of Sub-section (3) of Section 1 of the said 1952 Act with effect from January 31, 1966 and as such, the aforesaid Act and various Schemes framed thereunder are made applicable to the Bank. The Bank being a body corporate was constituted by a Proclamation by then Maharaja of Sikkim on June 24, 1968. The Central Provident Fund Rules, 1978 were formulated by its own Board and as such, it cannot have been treated to be a Government department created under the statute. The Bank was formed by the Proclamation of the then Maharaja of Sikkim and so it cannot have been considered to be a statute passed by the Government of Sikkim. The employees of the Bank do not qualify the provisions of Clause (c) of Sub-section (1) of Section 16 of EPF and MP Act, 1952. The Bank falls with in the meaning of non-factory establishments and its identity qualifies the provisions under Clause (b) of Sub-section (3) of Section 1 of EPF and MP Act, 1952 and para 1(3)(b)(iii) of the Employees' Provident Funds Scheme, 1952 framed thereunder to which the Act has been extended and made applicable with effect from January 31, 1966. Therefore, the employees of the Bank come under the purview of EPF and MP Act, 1952 as per provisions of Clause (b) of Sub-section (3) of Section 1 and para 1(3)(b)(iii) of .the Scheme framed thereunder read with Section 16 of the said Act. The last argument of Mr. Pawa is that in exercise of the powers conferred by Section 5, read with Sub-section (1) of Section 7 of EPF and MP, 1952, the Central Government has amended paragraph 1, sub-paragraph (3), Clause (b), item (iii) and for the words "banks doing business in one State or Union Territory and having no departments or branches outside that State or Union Territory" the words "banks other than the nationalised banks established under any Central or State Act" shall be substituted and therefore, the Bank falls with in the purview of Clause (b) of Sub-section (3) of Section 1 and not under Section 16(1)(c) of the EPF and MP Act, 1952. Therefore, the prayers made in the writ petition is liable to be dismissed. 9. Mr. S.P. Wangdi, learned Advocate. General appearing for respondent No. 1 submitted that the Bank is a creature of the Proclamation of the then Maharaja of Sikkim and it is a pre-merger law duly protected under the Constitution and therefore, it has to be an Act passed by Legislature. Admittedly the employees of the Bank are entitled to the benefits of contributory fund in accordance with the CPF Rules, 1978 which has been framed under Clause 47(2)(1) of the Proclamation dated June 24, 1968 and therefore, the CPF Rules, 1978 is statutory in character. Mr. Wangdi argues that the word "establishment" has not been defined in the Act. It has been held that the word "establishment" therefore, must be given its ordinary meaning. It means an "organisation" which employs persons between whom and the "establishment", the relationship of employees and employer comes to exist. Mr. Wangdi submitted that in case of Varadarajaswami Transports (Pvt.) Ltd. v. Regional Provident Fund Commissioner, Madras, reported in AIR 1965 Madras 466 it has been held as follows: "3. The word"establishment" has not been defined in the Act, though that word has been used in several provisions of the Act, as also in other terms which have been defined in the definition section. An 'establishment' therefore 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." Mr. Wangdi argued that the word "establishment" in the context of the usage of the word in the Act means "organised body of men maintained for a purpose" and also argued that in the case of Vittaldas Jagannathadas v. Regional Provident Fund Commissioner, Madras, reported in AIR 1965 Madras 508, it has been held as follows: "(12) I was also aware of the general difficulty stressed by sriNIVASAN J., and evident in all the decisions to which my attention has been drawn. After reference to several authorities and"WORDS AND PHRASES JUDICIALLY DEFINED" by BURROWS, Vol. 2, I find that the most helpful definition of 'establishment', at least in the context of the usage of that word in the present Act 19 of 1952, is that available in the OXFORD DICTIONARY, namely "Organised body of men maintained for a purpose"." According to Mr. Wangdi, therefore, there is no denying that the Bank herein is an establishment as contemplated under Section 16 of the EPF and MP Act, 1952 and the State Bank of Sikkim can also be held to be an "establishment" belonging to the Government (sic) or under the control of the Central Government or a State Government as provided under Section 16(1)(b) of the Act. Mr. Wangdi has made reference to the first proviso to Clause 4(1), Clauses 9(a), 10(1), 13(1), 14(1), 19, 23 (ii), 27(A) (2), 28, 29, 30(1), 31(1) 31(4), 31(A), 32(6), 33, 34(2), 43 and 47(1) of the Proclamation and submits that all these provisions would show that the Bank herein is an establishment belonging to or under the control of the Bank. Mr. Wangdi argues that the power to make rules or regulations and to administer or to enforce being one of the elements of authorities contemplated for the purpose of Article 12 of the Constitution, the Bank herein is also a State being an instrumentality of State action. It has been held in the case of Sukhdev Singh v. Bhagatram Sardar Singh Reghuvanshi, reported in AIR 1975 SC 1331 : 1975 (1) SCC 421 : 1975-I-

LLJ-399, that the expression ‘other authorities’ in Article 12 is wide enough to include within it every authority created by Statute and functioning within the territory of India, or under the control of the Government of India. The expression ‘other authorities’ will include all constitutional or statutory authorities on whom powers are conferred by law. Wangdi argues that since the Bank herein functions under a statute that is, under the Proclamation, its action constitutes State action, an inference that the Corporation is run under the authority of the State can be clearly drawn. From the reading of various clauses of the Proclamation it can be reasonably concluded that the business of the Bank has been carried on directly under the direction of the State Government. According to Mr. Wangdi, Section 16 is an exception to the other provisions, which can be clearly made out from the reading of Sub-section (4) of Section 1 of the Act and therefore, provisions of EPF and MP Act, 1952 cannot be made applicable to the State Bank of Sikkim. 10. I have gone through the pleadings of the parties and heard the learned counsel appearing for the parties. In this case the question involved is whether EPF and MP Act, 1952 can be made applicable to the employees of the Bank. A short question is involved whether the employees of the Bank herein are, covered by the provisions of EPF and MP Act, 1952 or any Scheme made thereunder. Clauses (b) and (c) of Sub-section (1) of Section 16 are reproduced below: “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 (c) to any other establishment set up 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; or” It is necessary to look into the following provisions of EPF and MP Act, 1952. Sub-sections (3) and (4) of Section 1 of the EPF and MP Act, 1952 are extracted below: “(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 Schedule 1 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: Provided that the Central Government may, after giving not less than two months’ notice of its intention so to do, by notification in the Official Gazette, apply the provisions of this Act to any establishment employing such number of persons less than (twenty) as may be specified in the notifications. (4) Notwithstanding anything contained in Sub-section (3) of this section or Sub-section (1) of Section 16, where it appears to the Central Provident Fund Commissioner, whether on an application made to him in this behalf or otherwise, that the employer and the majority of employees in relation to any establishment have agreed that the provisions of this Act should be made applicable to the establishment, he may, by notification in the Official Gazette, apply the provisions of this Act to that establishment on and from the date of such agreement or from any subsequent date specified in such agreement." It is also necessary to look into Clause (a) of sub-paragraph (3) of paragraph 1 and item (iii) of Clause (b) of sub-paragraph (3) of paragraph 1 of the Employees' Provident Funds Scheme, 1952 which are reproduced below: (2)(a) Subject to the provisions of Sections 16 and 17 of the Act, this Scheme shall apply to all factories and other establishments to which the Act applies or is applied under Sub-section (3) or Sub- section (4) of Section 1 or Section 3 thereof: (b) Provisions of the Scheme shall- (iii) as respects banks doing business in one State or Union territory and having no departments or branches outside that State or Union Territory covered by the notification of the Government of India in the Department of Security No. G.S.R. 2, dated December 18, 1965, come into force on January 31, 1965;" It is also necessary to quote the Notification issued by the Ministry of Labour dated February 25, 2000 which is also extracted below: "MINISTRY OF LABOUR New Delhi, February 25, 2000 G.S.R. 79.– In exercise of the powers conferred by Section 5, read with Sub-section (1) of Section 7 of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), the Central Government hereby makes the following scheme further to amend the Employees' Provident Funds' Scheme, 1952, namely:- l.(1) This scheme may be called the Employees' Provident Funds (Amendment) Scheme, 2000. (2) It shall come into force with effect from the date of its publication in the Official Gazette. 2. In the Employees Provident Funds Scheme, 1952- (i) in paragraph 1, sub-paragraph (3), Clause (b), item (iii), for the words"banks doing business in one State or Union Territory and having no departments or branches outside that State or Union Territory" the words "banks other than the nationalised banks established under the Central or State Act" shall be substituted;" 11. It is necessary to reproduce the relevant provisions namely, first proviso to Clause 4(1), Clauses 9(a), 10(1), 13(1), 14(1), 19, 23(ii), 27(A) (2), 28, 29, 30(1), 31(4), 31(A), 32(6), 33, 34(2), 43 and 47(1) from the Proclamation, which would show that the Bank herein is an establishment belonging to or under the control of the State Government of Sikkim. The relevant provisions read as follows: "4.(1) The authorised capital of the Bank shall be one crore of rupees divided into one hundred thousand shares of one hundred rupees each which shall be issued, subscribed and allotted in the prescribed manner; Provided the authorised capital may be increased by the Chogyal, from time to time, in his discretion;" "9. (a) a Chairman and two directors to be nominated by the Government of Sikkim." "10.(1) The Chairman shall hold office for such terms as the Government of Sikkim may fix when nominating him and shall be eligible for re-nomination." "13. (1) The Government of Sikkim may remove from office the Chairman, or the Managing Director, or any other director, including an elected director;" "14.(1) If the Chairman is rendered in capital of discharging his duties by reason of infirmity or otherwise or is absent in circumstances not involving the vacation of his office, the Government of Sikkim may nominate another person to officiate in such vacancy."19.(1)(a) The Bank shall, if so required by the Government of Sikkim, act as agent of the Government, accept moneys on account of the Government and, make payments up to the amount standing to the credit of Government's account and carry out Government remittances and other banking pperations, including the management of the public debt of the Government. (b) The terms and conditions on which the Bank shall act as agent of Government and undertake other functions for Government shall be such as may be approved by the Chogyal. (c) The Bank may, for the purpose of acting as agent of the Government of Sikkim, as provided in Clause (a) appoint, on such terms and conditions as may be agreed upon, Messrs. Jetmull Bhojraj as its agent, at any place in Sikkim where the Bank does not have a branch and where there is an office of Messrs. Jetmull Bhojraj. (2) The Bank shall be authorised to carry on the business of banking in all its forms without any restrictions whatsoever including accepting of deposits for the purpose of lending or investment, repayable on demand or otherwise and withdrawable by cheques, draft, order or otherwise." "23.(ii) whose remuneration is, in the opinion of the Government of Sikkim, excessive" "27-A.(2) The Bank shall within one month from the end of every quarter submit to the Government of Sikkim a return in the prescribed form and manner of the assets and liabilities referred to in Sub-section (1) as at the close of business on the last Friday of the previous quarter or, if that Friday is a public holiday in Sikkim, at the close of business on the preceding working day." "28.(1) The Bank shall, before the close of the month succeeding that to which it relates, submit to the authority designated by the Government of Sikkim a return in the prescribed form and manner showing its assets and liabilities in Sikkim as at the close of business on the last Friday of every month or if that Friday is a public holiday in Sikkim, at the close of business on the preceding working day. (2) The Government of Sikkim may at any. time direct the Bank to furnish it or the authority designated by it within such time as may be specified by it with such statements and information relating to the business of affairs of the Bank (including any business or affairs with which such bank is concerned) as the Government of Sikkim may consider necessary or expedient to obtain for the purposes of this Proclamation, and without prejudice to the generality of. the foregoing power may call for information every half year regarding the investments of the Bank and the classification of its advances in respect of industry, commerce and agriculture." "29.(1) The Bank shall not- (a) make any loans or advances on the security pf its own shares; or (b) grant unsecured loans or advances–(i) to any of its directors or (ii) to firms or private companies in which any of its directors is interested as partner or managing agent or guarantor or to individuals in cases where any of its directors is a guarantor. (2) The Bank shall, before the close of the month succeeding that to which the return relates, submit to the authority designated by the Government of Sikkim, a return in the prescribed form and manner, showing all unsecured loans and advances granted by it to companies in cases (other than those in which the Bank is prohibited under Sub-section (1) to make unsecured loans and advances) any of its directors is interested as director or managing agent or guarantor. (3) If on examination of any return submitted under Sub-section (2) it appears to the Government of Sikkim that any loans or advances referred to in that Sub-section are being granted to be determined in the interest of the depositors of the Bank the Government of Sikkim may, by order in writing, prohibit the Bank from granting any such further loans or advances or impose such restrictions on the grant thereof as it thinks fit, and may by like order direct the Bank to secure the repayment of any such loans or advances within such time as may be specified in the order.” “30.(1) The Bank shall not, except with the prior approval of the Government of Sikkim, remit it in whole or in part any debt due to it by- (a) any firm, its director, or (b) any firm or company in which any of its directors is interested as director, partner, managing agent or guarantor, or (c) any individual if any of its directors is his partner or guarantor.” “31.(1) The Government of Sikkim may request the Reserve Bank of India to cause an inspection to be made, by one or more of its officers, of the Bank and its books and accounts. (4) The officer making the inspection shall report to the Government of Sikkim and any inspection made under this section and a copy of the inspection report shall also be furnished to the Bank by such officer and the Government of Sikkim may direct the Bank to take such steps as it may deem necessary in the light of the findings of the inspection.” “31-A. (a) Where the Government of Sikkim is satisfied that it is necessary or expedient in the public interest or in the interest of depositors so to do, it may determine the policy in relation to advances to be followed by the Bank when the policy has been so determined, the Bank shall be bound to follow the policy as so determined. (b) The Government of Sikkim may caution or prohibit the Bank against entering into any particular transaction or class of transactions and generally give advice to the Bank. (c) When the Government of Sikkim is satisfied that it is necessary or expedient in public interest so to do, it may direct the Bank not to carry out or comply with any resolution passed by its Board and the Bank shall comply with the such direction.” “32. (6) The Government of Sikkim may at any time issue directions to the auditor requiring him to report it upon the adequacy of measures taken by the Bank for the protection of its shareholders, depositors and other creditors or upon the sufficiency of the procedure in auditing the affairs of the Bank, and may at any time enlarge or extend the scope of the audit or direct that a different procedure in audit be adopted and direct that any other examination be made by the auditor if the Government of Sikkim so desires.” “33. The accounts and balance-sheet referred to in Section 36 together with the auditor’s report shall be published in the prescribed manner and three copies thereof shall be furnished as returns to the authority designated by the Government of Sikkim within three months from the end of the period to which they refer; Provided that the Government of .Sikkim may extend the said period of three months for the furnishing of such returns.” 34.(2) The rate of dividend shall be determined by the Board with the approval of the Government of Sikkim." “43.(1) If any difficulty arises in giving effect to the provisions of this Proclamation, the Chogyal may, make such provision as appear to him necessary or expedient for removing the difficulty. (2) An order under Sub-section (1) may be made so as to have retrospective effect.” “47.(1) The Board may, with the previous sanction of the Government of Sikkim, make regulations not inconsistent with this proclamation to provide for all matters for which provision is necessary or expedient for the purpose of giving effect to the provisions of this Proclamation.” The State Bank of Sikkim Proclamation, 1968 is a law. Clause (1) of Article 371-F provides that for the purpose of facilitating the application of any such law as is referred to in Clause

(k) in relation to the administration of the State of Sikkim and for the purpose of bringing the provisions of any such law into accord with the provisions of the Constitution, the President may, within two years from the appointed day, by order, make such adaptations and modifications of law, whether by way of repeal or amendment, as may be necessary or expedient. The period of two years has already expired and only one Order has been made by the President in exercise of the powers conferred by the said clause, being the Adaptation of Sikkim Laws (No. 1) Order, 1975 which has, however, been amended by another order made by the President dated September 13, 1975, being the Adaptation of Sikkim Law (No. 1) Amendment Order, 1975. In the Adaptation of Sikkim Laws (No. 1) Order, 1975, "existing law" means any law in force immediately before the appointed day in the whole or any part of the territories comprised in the State of Sikkim and "law" in the aforesaid order includes any enactment, Proclamation, Regulation, rule, notification or other instrument having, immediately before the appointed day, the force of law in the whole or any part of the territory now comprised in the State of Sikkim. Paragraph 3 of the order provides as under:– "3. Whenever an expression mentioned in column 1 of the Table hereunder occurs (otherwise than in a title or preamble or in a citation or description of an enactment) in an existing law then, in the application of that law in relation to the administration of the State of Sikkim, or, as the case may be, to any part thereof, unless the context otherwise requires, there shall be substituted therefore the expression set opposite to it in column 2 of the said Table and there shall also be made in any sentence in which that expression occurs such consequential amendments as the rules of grammar may require. 1 2 His Highness The Maharaja of Sikkim His Highness The Maharaja Sahib The Maharaja in Council Sikkim Darbar Sikkim Government State Government Subsection (26) of Section 3 of the Sikkim Interpretation and General Clauses Act, 1977 is reproduced below:"(26) "law means any law, Act, Ordinance, Proclamation, regulation, rule, notification, order, by-law, scheme or other instrument having for the time being the force of law;" 12. The CPF Rules, 1978, that is, the, State Bank of Sikkim Employees' Provident Fund Rules, 1978 was made under Clause 47(2X1) of the Proclamation dated June 24, 1968 by the Board of Directors of the Bank i. e. State Bank of Sikkim. The Board of Directors of the Bank with previous sanction of the Government of Sikkim made regulations not inconsistent of the proclamation to provide for the establishment and maintenance of provident fund and other benefits of fund for employees of the Bank and the aforesaid CPF Rules, 1978 has been made under the provision of Clause 47(2)(1) of the Proclamation, i.e. State Bank of Sikkim Proclamation, 1968 and therefore, it has the force of law. It is, therefore, clear that the State Bank of Sikkim Proclamation, 1968 is a State Act and it is pre-merger law. Under the aforesaid Act or law employees of the Bank are entitled to the benefit of Contributory Provident Fund etc. in accordance with the Rules, i. e. State Bank of Sikkim Employees' Provident Fund Rules, 1978 framed under the State Bank of Sikkim Proclamation dated June 24, 1968 covering such benefit. From the analysis, it also proved that the effective control of the Bank lies with the State Government of Sikkim and therefore, the provision of Clause

(c) of Sub-section (1) of Section 16 of EPF and MP Act, 1952 applies and the provision of Clause (b) of Sub-section (3) of Section 1 is subject to the provision of Section 16. Since the Section 16(1)(c) applies to the employees of the Bank, provision of Clause (b) of Sub-section (3) of Section 1 cannot have any application and therefore, arguments advanced by Mr. Pawa, learned advocate for respondent No. 4 cannot be accepted. 13. In view of the position of law as discussed, I declare that the CPF. i.e. Contributory Provident Fund Accounts of the Bank i.e. State. Bank of Sikkim shall be governed by the provisions of the CPF Rules, 1978 i. e. the State Bank of Sikkim Employees Provident Fund Rules, 1978 and not by the provisions of EPF and MP Act, 1952 i.e. Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and various Schemes made thereunder and therefore the CPF Accounts of the employees of the Bank shall not be transferred to the Central Provident Fund authorities under the EPF and MP Act, 1952. 14. In the result, the writ petition is allowed. No order as to costs.