
(1977) 06 MAD CK 0006
In the Madras High Court

A. Gangadharan

APPELLANT

Vs

The Government of India and Another

RESPONDENT

Date of Decision : 13-06-1977

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 19A

Citation : (1978) 1 MLJ 365

Hon'ble Judges : G. Ramanujam, J

Bench : Division Bench

Judgement

G. Ramanujam, J.—The second respondent, herein is a firm. carrying on the business of publication of two medical journals ""Antiseptic""

and ""Health"", at No. 323-24, Thambu Chetty Street, G.T. Madras-1, from the year 1904. It is also running a printing press under the name of

Antiseptic Press at No. 10, Thambu Chetty Street, G.T. Madras-1, which was established in the year 1932. The printing press has been brought

under the scope of the Employees' Provident Funds and Family Pension Fund Act, 1952 (hereinafter referred to as the Act) from the year 1961.

The petitioner herein who is a clerk employed in connection with the publication of the two medical journals at No. 323-24, Thambu Chetty

Street, G.T. Madras-1, sought the extension of the provisions of the said Act to the said office at No. 323-24, Thambu Chetty Street, G.T.

Madras-1 on the ground that both the printing press and the administrative office are integrated and inseparable units. The Regional Provident

Fund Commissioner, Madras, by his letter dated 19th February, 1964 called upon the second respondent to implement the provisions of the Act

with effect from 1st February, 1964 to persons employed in the said office. Aggrieved against that the second respondent, however, made a

representation to the first respondent u/s 19-A of the Employees' Provident Fund Act. The first respondent without affording, any opportunity to the employees working in No. 323-24, Thambu Chetty Street, G.T. Madras-1, passed an order treating the press and administrative office as two separate units. The employees of the second respondent filed W.P. No. 603 of 1966 in this Court. This Court allowed the same and directed the first respondent to dispose of the application of the second respondent u/s 19-A afresh after hearing the employees. After hearing the parties, the first respondent by its cryptic order dated 11th September, 1969 held that the printing press and the publishing house of the second respondent should not be treated as one and that as such the Employees' Provident Funds Act was not applicable to the staff working in the administrative office. Thereafter, the employees filed W.P. No. 1023 of 1970 challenging the said decision of the first respondent. The said writ petition was allowed and, the matter was remitted to the first respondent for passing a speaking and reasoned order. The first respondent thereafter passed an order dated 15th September, 1972 holding that the office establishment and the printing press of the second respondent are two separate establishments and that the office establishment is not liable to be covered by the Act. The said decision of the first respondent dated 15th September, 1972 has been challenged in this writ petition by the petitioner.

2. The petitioner states that both the establishments viz., the printing press as well as the office establishment are owned by the second respondent, that the office establishment looks after the printing, publication and circulation of the aforesaid two journals, that the accounts relating to the printing press and the publication of the two journals are maintained by the office establishment, that the entire work relating to the printing, publication and circulation of the two medical journals are attended to by it, that the salaries of the employees working both in the printing press and office establishment are paid from out of the subscription and advertisement revenue realised by the office establishment, that the second respondent maintains and prepares only one common balance-sheet and profit and loss account for both the establishments and that the printing press cannot be run without the office establishment and vice versa. In view of the above factors, it is contended that both the establishments viz.,

the printing press and the office establishment should be taken as one integrated unit for the purpose of the application of the Act.

3. This claim of the petitioner is opposed by the second respondent-management on the ground that the printing of the medical journals and the

editorial and publication work connected therewith are carried on by the two partners on behalf of the firm as two independent and separate

establishments, that separate accounts are maintained and separate balance-sheet and profit and loss account have been drawn up, each year, that

there is no functional integration of the two establishments and that, in fact, the publication of two magazines have been recognised as separate

establishments by various authorities including the incometax authorities. It is also the case of the second respondent that the workers in the printing

press at No. 10, Thambu Chetty Street, G.T., Madras-1, and the employees of the publication department at No. 323-24, Thambu Chetty Street,

G.T., Madras have all along been represented by two separate units, that separate and independent settlements have been entered into by the

management with the workers in the printing press and the employees in the office establishment, that the pay scales are different in the two

establishments and that therefore the two establishments have to be treated independent of each other.

4. In the impugned order passed by the first respondent, the reasons given for treating the two establishments as separate and independent units

are these:

1. The press and the office are located in different premises and are registered under different enactments;

2. There are two separate unions for the press and the office workers;

3. The unity of finance, management and functional integrality between the two units would not attract the provisions of the Employees' Provident

Funds and Family Pension Fund Act, 1952;

4. The primary activity of the second respondent is the publication of medical journals viz., " Antiseptic " and " Health " and not mere printing; and

5. The office carried on in premises No. 323-24, Thambu Chetty Street, G.T., Madras, is not an adjunct of the printing press carried on in

premises No. 10, Thambu Chetty Street, G.T., Madras-1.

5. From the above reasoning given by the first respondent it is clear that there is

unity of finance management and functional integrity between the two units as alleged by the petitioner. Even otherwise the facts set out above will make it abundantly clear that the financial, managerial and functional integrity between the two units cannot at all be disputed. The second respondent is managing both the printing press as well as the editorial and publication work relating to the medical journals. The maintenance of the press as well as the office establishment is from out of the subscription and the advertisement revenue from the publication of the two medical journals; and the printing press cannot be carried without the office establishment and vice versa. This will clearly establish the financial, managerial and functional integrity between the two units. The first respondent has taken the view in the impugned order that even though there is financial, managerial and functional integrity between the two units, they cannot be treated as a single unit in view of the fact that both are located in different premises which are not adjunct and registered under different enactments and that there are two separate unions for the press and the office. Therefore, the question is whether the location of the two units in two different premises and its registration under two different enactments will make them the two separate and independent units as has been held by the first respondent.

6. It is contended by the learned Counsel for the petitioner that once there is financial, managerial and functional integrity between the two units, they should be treated as one for the purpose of the application of the Act.

7. Ramakrishnan, J., in *Globe Theatres v. Labour Court, Madras* (1965) I L.L.J.243, culled out the following principle from certain earlier decisions:

To decide the question whether two or more units belonging to the same owner or proprietor constitute a single industrial establishment for the

purpose of the rule, one must view the matter in the ordinary industrial or business sense, having regard to the scheme and objects of the Act; vide

Associated Cement Companies Limited (Chibesa Cement Works) Jhinkpani v. Their Workmen (1950) I L.L.J. 1.

According to the learned Judge to find out whether one or more enterprises constitute one single establishment in the eye of law, the decisive

elements are the location of the establishments and their functional integrity

that is the existence of one Code relating to the categories of workmen and their scales of wages etc. In *P.S.N.S. Ambalavana Chettiar and Co. (P.) Ltd., Madras Vs. Regional Provident Fund Commissioner, Madras*, the same learned Judge had to deal with somewhat similar question. In that case, a private limited company doing export; and imports business in non-ferrous metals and other commodities had its office at one place and the factory at another place. The question for consideration was whether the factory and the office constitute one house of business so as to form a single establishment. It was found in that case that the business of imports and exports in non-ferrous metals and other commodities was carried on at No. 14, Mint Street, Madras, and its rolling factory was at No. 7, Nelson Manicka Mudaliar Road, Aminjikarai, which was about five miles away. Thirty workers were engaged in the factory and the Employees' Provident Funds Act was made applicable to the workers in the factory; later, the office establishment in Mint Street was also brought within the scope of the Act by an order of the Regional Provident Fund Commissioner. This was challenged before the High Court. Ramakrishnan, J., held that the word "establishment" not having been defined in the Act, the question for consideration was to find out whether the factory at Amnjikarai and the office at Mint Street constitute one house of business so as to form a single establishment for the purpose of the Act. An establishment which involves the running of a factory may also require a staff for procuring raw materials and disposing of the manufactured products and also for the maintenance of accounts. Integral relation between all the items of work cannot be ignored in deciding the above question. If the workers in the Mint Street office are bound to do the work connected with the factory, then the office establishment has to be taken to be part of the factory establishment.

8. In *M.D. Ramakrishnan v. Tamil Nadu Electricity Board* (1971) 1 L.L.J. 433, Ramaprasada Rao, J., expressed the view that the test to find out whether different organisations of a single industry form part and parcel of one establishment is the essential, and no doubt an important test, is whether the employees from one organisation can be transferred to another organisation and if this test of transferability is satisfied, then it can be treated as a single establishment. In that case, a revenue unit in George Town

office of the Assistant Engineer, Distribution, Madras Electricity

System, was held to be a limb of the establishment of the office of the Superintending Engineer, Distribution, Madras Electricity System in Mount

Road and therefore both were treated as forming part of one integrated unit.

9. In *The Associated Cement Companies Limited, Chaibassa Cement Works, Jhinkpani Vs. Their Workmen*, , the Supreme Court had to

consider a question whether a company owning a cement factory and a lime stone quarry at two different places could be treated as one unit for

the purpose of Section 25-E of the Industrial Disputes Act. After expressing the view that whether a particular unit is a part of another

establishment is a pure question of fact, the Supreme Court proceeded to say that the raw materials for the cement factory were supplied by the

lime stone quarry owned by the same management though situate about a mile and a half from the factory, that the management was maintaining

one common account and were looked after by one manager and that the members of the staff were also transferred from quarry to the factory

and vice versa according to exigencies, that there was general unity of purpose and functional integrality between the limestone quarry and the

factory and therefore it should be treated as one establishment for the purpose of Section 25-E(iii) of the Industrial Disputes Act. According to the

Supreme Court the tests which are normally to be applied to decide as to what constitute one establishment would be unity of ownership,

management, supervision and control, unity of finance and employment, unity of labour and conditions of service of workmen, functional integrality,

general unity of purpose and geographical proximity. The Supreme Court also pointed out that no particular test can be adopted as an absolute

and invariable test, that indeed in a large number of cases, several tests may fall for consideration at the same time, and that the test to be adopted

to determine the true relationship between the two units should depend on the facts of each case.

10. In *The Regional Provident Fund Commissioner, Bombay Vs. Shree Krishna Metal Manufacturing Co., Bhandara*, , the factory was engaged

simultaneously in different industrial activities and one of them was in relation to an industry specified in Schedule I of the Employees' Provident

Funds Act, 1952. The factory was engaged in the manufacture of hydrogenated

oil or vegetable ghee. It had also a department in the factory wherein the tin containers for storing and packing the manufactured oil were fabricated. The number of workmen employed in the fabrication of tin containers were 31 as against 211 engaged in the manufacture of hydrogenated oil. Further the tin containers were not sold in the market nor the customers who were supplied ghee were charged with the price of the tin containers. On these facts, it was held by the Supreme Court that the factory manufacturing hydrogenated oil or vegetable ghee could not be considered to be engaged mainly in the manufacture of tin containers which was one of the industries specified in Schedule I to the Act at the relevant time. The fabrication of tin containers had been undertaken by the oil mills only as a feeder activity; it was integrally connected with its main business of producing and marketing vegetable oils as such, it was a minor part of the said main activity, and hence the factory cannot be held to be covered by Section 1(3)(a) of the Act. Thus, in that case the manufacture of tin containers was held to form part of the business of vegetable ghee and was not treated as an independent unit.

11. Applying the tests set out in the various decisions referred to above to the facts of the present case, it is seen that except the transferability test, all other tests are satisfied. There has been financial, managerial and functional integrality between the two units and one cannot exist without the other. The fact that the premises where the printing and publishing activities are carried are not adjunct and they are registered under two separate enactments is not quite material in deciding the question as to whether the two activities carried on by the second respondent form part of one and the same establishment. As already pointed out, the Supreme Court has clearly stated that any one of the tests cannot be taken to be absolute and indispensable. Therefore, even though the transferability test is not satisfied, it cannot be said that both the units are two independent and separate units. As pointed out by the Supreme Court, the question is to be generally viewed with reference to the relationship between the two units without giving any specific emphasis on any particular test. Therefore, taking all the facts into consideration, the printing press as well as the office establishment looking after the editorial and publication work of the two journals should be treated as a single establishment.

12. The reasoning given by the first respondent that since the premises are not adjunct and that they have two separate unions and therefore, it

should be treated as two separate units is not quite convincing. The fact that there are two unions cannot be taken to be a conclusive factor

indicating that the two units are separate and independent.

13. The learned Counsel for the second respondent referred to the decision in Mahipal Singh v. Regional Provident Fund Commissioner (1972)

L.I.C. 1202, and contended that an employer can have two or more independent establishments under his control and employing less than 20

persons in each of them without attracting liability to contribute to the provident fund under the Act, and that in our present case, as the office

establishment at No. 10, Thambu Chetty Street, G.T., Madras-1, does not engage more than 20 persons, it cannot be brought within the coverage

of the Act. I do not see how the said decision will help. The first respondent in that case, a partnership concern, was carrying on three

businesses viz.: (1) Commission agency business in cigarettes, petrol and kerosene oil; (2) Commission agency business in foodgrains; and (3) oil-

mill called Shri Shankar Oil Mill. The said three businesses were located in three different places and employed less than 20 persons in each. The

Regional Provident Fund Commissioner took the view that though each of the business employed less than 20 persons, since the first petitioner

concern employed more than 20 persons in all the three businesses it was liable to pay the provident fund contribution under the Act and the

Scheme framed thereunder. The said order of the Provident Fund Commissioner was challenged in a writ petition. The Mysore High Court held:

On a careful reading of the Act, we are of the opinion that an employer having two or more establishments under his control and employing less

than twenty persons in each of them, even though the total number of employees in all the establishments exceeds twenty, he would not be liable to

pay any contribution under the Act. That appears to be the true interpretation of the provisions of the Act. If the intentment of the Act was that

every employer employing twenty or more employees was liable to pay the provident fund contribution irrespective of the fact whether they are all

employed in the same establishment or not, the Act would have stated so and that there would have been no need to enact Section 2-A also.

In that case all the three activities carried on by the first petitioner were treated as separate and independent and, therefore, it was held that the adding up the number of employees in all the businesses was not possible. But, in this case, one of the activities, i.e., printing press is already covered by the Act and the only question is whether the printing press and the office establishment form part of the same establishment. Once it is shown that the office establishment and the printing press form part of the same establishment, the conclusion is inescapable that both the activities should be brought under the coverage of the Act as one establishment. The above decision of the Mysore High Court is not applicable to the facts of this case.

14. The decision of the first respondent holding that the both printing press and the office establishment are two independent units merely because there are two separate unions and they are located at different places cannot be sustained especially when the financial, managerial and functional integrity of the two units have admittedly been established. The order of the first respondent, has, therefore, to be set aside and the writ petition allowed. Accordingly, this writ petition is allowed. There will, however, be no order as to costs.

15. In view of the findings given above, the question as to which of the two activities is the main activity for purpose of the application of the Act is left open.