(1993) 01 KL CK 0058

In the High Court Of Kerala

Case No : O.P. No. 6786 of 1989

Annamma Iype APPELLANT

Vs

Regional Provident Fund Commissioner RESPONDENT

Date of Decision : 15-01-1993

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 1(15), 16

Citation : (1993) 3 ILR (Ker) 200 : (1993) 1 LLJ 975

Hon'ble Judges : M.M. Pareed Pillay, J

Bench : Single Bench

Advocate : M.V. Joseph, for the Appellant; George Joseph, for the Respondent

Final Decision : Allowed

Judgement

Pareed Pillay, J.—Koompanpara and Kaloor Group ''B'' Estate belonged to petitioner''s husband. It was a covered establishment under the Employees'' Provident Funds and Miscellaneous Provisions Act (for short ''the Act''). Contributions for the employees in the Estate were regularly remitted to the respondent. Case of the petitioner is that rubber trees in the Estate became old, that they were given for slaughter tapping, that after her husband''s death the Estate having an extent of 22.85 acres devolved on her and children, that she and her children by agreement allowed slaughter tapping for Rs. 67,000/- on October 8, 1986 and that the employees for whom contributions were paid under the Act left the Estate on receiving compensation.

2. Inspector deputed by the respondent inspected the property and reported that he verified the returns for the month of October, 1986, that he found the Estate closed for the purpose of replanting and that slaughter tapping was going on through a contractor who has no regular employees. In the report dated September 8, 1987 it is stated that there were no eligible employees for whom contributions have to be I made.

3. Ext. P-2 communication was sent by the petitioner to the respondent stating that she is not liable to pay any administrative charge for the area she got by partition as it is not a covered one under the Act. Respondent took up the stand that even though there are no eligible employees to contribute to the fund it is incumbent upon the petitioner to pay the minimum administrative charges as the establishment is still under the purview of the Act. Direction was given to the petitioner to remit the minimum administrative charges.

4. The question that arises for consideration is whether a covered establishment would continue as such for all times to come irrespective of partition among the owners. In other words, whether the partition effected among the owners is only to be ignored. Contention of the respondent is that even though the establishment was closed temporarily and there are no eligible employees and there was partition, once the establishment is covered it would continue to be so and the administrative charges at the minimum rate should be paid regularly and "nil" returns filed. It is contended that closure for a short duration will not take off the establishment from the purview of the Act and that it would not make the establishment a new one when it re-opens after the closure.

5. Subject to Section 16, the Act applies to every establishment which is a factory engaged in any industry specified in Schedule I and in which twenty or more persons are employed and 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 that behalf. Section 1(5) postulates that an establishment to which the Act applies shall continue to be governed by the Act notwithstanding that the number of persons employed therein at any time falls below twenty. Thus, in a case where in a covered establishment strength of employees at a particular time is below twenty it cannot be contended by the employer that the establishment is no longer within the purview of the Act. Merely on account of the temporary suspension of the activities of an establishment the employer cannot take the position that he is no longer liable to pay the administrative charges.

6. Learned counsel for the respondent relying on the Proviso to para 36(1) of the Employees'' Provident Funds Scheme, 1952 pointed out that even if there is no employee who is required or entitled to become a member of the Fund, the employer has necessarily to send a Nil return. On the strength of the proviso, it cannot be contended that in a case where there was a real and bonafide partition which disrupted the original establishment and resulted in the creation of separate and distinct establishments the minimum administrative charges should be continued to be paid by the employer. Once there has been a real and bonafide division which disrupted the original establishment and separate and distinct establishments are created as a result of the partition in liability cannot be saddled upon allottees to pay the minimum administrative charges as before.

7. Contention of the petitioner is that as a result of Ext. P1 partition she got full rights in the property exclusively and that at the time of partition there was no

rubber plantation in the property and much less any employee and that being the position it cannot be held that the property which she obtained as per Ext.P1 continues to be covered under the Act and that she is liable to pay the minimum administrative charges. On account of the partition, the covered establishment became disrupted and passed on to several hands. In such a situation, one among the allottees alone cannot be called upon to pay the administrative charges.

8. In a Full Bench decision in Zainulabdeen ` Regional P.F Commissioner 1974 KLT 708(F.B.) this court held that in a case where there was disruption of an establishment covered by the Act on account of real and bonafide partition and if the separated establishments employ less than twenty persons, the Act does not apply. In the case in hand, as a result of the partition, the establishment which was covered under the Act prior to the partition is disrupted and as a result of it new and distinct establishments have come up. In such a situation petitioner who is only one of the allottees under the partition cannot be called upon to pay the minimum administrative charges under the Act.

9. For the foregoing reasons, Ext, P-3 is quashed. O.P. stands allowed.