

(1958) 02 PAT CK 0008

In the Patna High Court

Case No : Misc. Judl. Case No. 694 of 1956

Bankim Chandra Chakravarty and Another

APPELLANT

Vs

Regional Provident Fund Commissioner and Others

RESPONDENT

Date of Decision : 11-02-1958

Acts Referred:

Constitution of India, 1950 — Article 226
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 1(3),
14(3), 14A, 19A, 2
Evidence Act, 1872 — Section 101, 102, 103, 104
Industries (Development and Regulation) Act, 1951 — Section 2

Citation : AIR 1958 Patna 314 : (1958) 6 BLJR 239 : (1958) 2 LLJ 444

Hon'ble Judges : V. Ramaswami, C.J; R.K. Choudhary, J

Bench : Division Bench

Advocate : B.C. Ghosh and A.C. Mitra, for the Appellant; Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

R.K. Choudhary, J.—The facts giving rise to the presentation of this writ application are as under:

2. Petitioner No. 1 is a share-holder in the Dhalbhum Trades and Industries Ltd., petitioner No. 2, a company registered under the Indian Companies Act, 1913 (hereinafter to be referred to as the company), and the Managing Director of the firm of B. Chakravarty and Co. (Private) Ltd., which are the managing agents of the company. It appears that the company was required to submit monthly returns and deposit the contributions and administrative charges as provided by the Employees' Provident Funds Act, 1952 (hereinafter to be referred to as the Act), read with the provisions of the Employees' Provident Funds Scheme, 1952 (hereinafter to be referred to as the Scheme).

As it was not regular in submitting the monthly returns and depositing the contributions, notices were issued to it from time to time for complying with the

requirements, and it appears that subsequently the company made the deposits up to November, 1953. The deposits for the months of December, 1953 to May, 1954, were, however, not made, and monthly returns for the months of January to May, 1954, were not submitted.

Consequently, a complaint was filed against petitioner No. 1 and cognizance was taken by the learned Sub-Divisional Magistrate of offences u/s 14 of the Act read with paragraph 76 of the Scheme and Petitioner No. 1 was put on trial. He was convicted by the trial court, but on appeal the learned Additional Sessions Judge acquitted him because he held that sanction for the prosecution had not been given by any competent authority as required by the law and that the prosecution being in respect of more than three offences of the same kind committed within the space of twelve months, the trial was in contravention of Section 234 of the Code of Criminal Procedure.

On the merit of the case, however, he definitely held that the facts disclosed in the case attracted the provisions of the Act and the Scheme as there were fifty or more persons employed in the company and it engaged in an industry specified in Schedule I of the Act. As the petitioners failed to deposit the contributions for subsequent periods, the Regional Provident Fund Commissioner, opposite party No. 1, filed fifteen petitions of complaint u/s 14 of the Act read with paragraph 76 of the Scheme for the period from June, 1954 to July, 1955.

Some of the cases are pending before the Sub-divisional Officer, opposite party No. 2, and the others are pending before Mr. P. N. Sen, Magistrate, 1st Class, opposite party No. 3. It is also alleged that opposite party No. 1 is demanding contributions for subsequent periods also. In those circumstances the petitioners filed the present application under Article 226 of the Constitution of India for issue of an appropriate writ to quash the criminal proceedings pending before the opposite party Nos. 2 and 3, and to restrain opposite party No. 1 from demanding or realising any contribution. The application has been opposed by the learned Government Pleader on behalf of opposite party No. 1 who has shown cause by filing a counter-affidavit.

3. The company, namely, petitioner No. 2, as the statement in the application shows, is carrying on business at Ghatsila in the district el Singhbhum in manufacture Of high pressure incandescent lamps, besides mines, fisheries, hat, etc.

4. On behalf of the petitioners Mr. Ghosh has contended that the provisions of the Act do not apply to this company. In support o[this contention he has drawn our attention to Section 1(3) of the Act which runs as follows:

"Subject to the provisions contained in Section 16, it applies in the first instance to all factories engaged in any industry specified in Schedule 1 in which fifty or more persons are employed, but 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 all faclrres employing such

number of persons less than fifty; as may be specified in the notification and engaged in any such industry."

It is contended that the petitioner-company is not engaged in any industry specified in Schedule I of the Act and that less than fifty persons are employed in it and, as such, under the above section the Act has no application to the petitioner-company. On the above contention, two questions have to be determined, namely (1) whether there are fifty or more persons employed in the company and (2) whether it is engaged in any industry as specified in Schedule I of the Act.

5. So far as the question of there being fifty or more persons employed in the company is concerned, reliance has been placed on behalf of the petitioners on Annexures "A", "B" and "C" attached to the petition. Annexure "A" is a letter, written by the Inspector. Employees' Provident Funds, Bihar, to the petitioner-company, dated 14-11-1952, inviting its attention to Sub-section (3) of Section 1 of the Act and asking it to give, month by month, the number of employees on rolls, inclusive of clerical staff, watch and ward, etc., drawing Rs. 300 or less per month as basic wages from October, 1951 to October, 1952.

It is contended with respect to this letter that by this letter the Inspector wanted the company to give the number of only those employees who were drawing Rs. 300 or less per month as basic wages. In reply to that letter, therefore, the company wrote on 28-11-1952, giving the number of the employees who were drawing less than Rs. 300 per month as basic wages and the figures so given for the period from October, 1951 to October, 1952, showed that the number of such employees had always been less than fifty.

This is Annexure "B". Annexure "C" is dated 16-2-1955, by which again the petitioner company raised the point that the Act did not apply to it as it did not employ fifty or more persons in its business and it gave figures for the period from December, 1953 to January, 1955, showing that the employees engaged in the business including the number of casual labourers had always been less than fifty, in this letter, however, it was stated that the list submitted in November, 1952, included all persons employed casually or on a permanent basis.

But in paragraph 10 of the writ petition the petitioners have made specific statements that the petitioner-company did not employ, at any time, fifty or more persons other than those who have been described as excluded employees. It is also stated in paragraph 12 of that petition that the reply that was sent, namely, Annexure "B", gave a full list of the employees whose basic wages did not exceed Rs. 300 per month, and in paragraph 13 it is stated that likewise in the letter, Annexure "C", the figures for the period from December, 1953 to January, 1955, were given.

The use of the word "likewise" in this paragraph makes it perfectly clear that the figures given in the letter related to the employees whose basic wages did not exceed Rs 300 per month as has been stated in paragraph 12 of the petition

referred to above. In a rejoinder filed on behalf of the petitioners it has been stated that the petitioners made it clear in Annexure "C" that the list submitted in November, 1952, included all persons employed casually or on permanent basis, and on this statement in Annexure "C" Mr. Ghosh has contended that the list given in that document included all employees drawing more or less than Rs. 300.

In face of the statements referred to above in the writ petition itself, it is not possible to accept the contention of Mr. Ghosh and it must be held that the figures given in those letters related to only those employees who were drawing Rs. 300 or less as basic wages.

6. It has been contended by Mr. Ghosh that the employees, who were drawing more than Rs. 300 as their basic wages, are., under paragraph 2 (f) of the Scheme, excluded employees, and, therefore, they must be excluded from making the total number of fifty or more persons as employees for the purpose of Section 1(3) of the Act. The argument is based on confusion. A plain (reading of the above section makes it perfectly manifest that for the purpose of the application of the Act to a particular factory, all employees, whether drawing more or less than Rs. 300 as their basic wages taken together, must be 50 or more persons.

Thus where the number of all such employees is less than fifty, then only the provision of the Act is inapplicable. In my view, therefore, the employees drawing more than Rs. 300 as their basic wages must be taken into account for the purpose of reaching the number of fifty or more.

7. It has then been contended by Mr. Ghosh that in the present case there is no material on the record to show that the employees engaged in the petitioner company were fifty or more. The judgment of the learned Additional Sessions Judge, which is annexure (g) to the counter-affidavit, shows that the learned Judge took the view that fifty or more persons were employed in that company.

Even after this finding, the petitioners do not make any statement in their writ petition as to the total number of such employees. It was for them to have brought on the record materials on which they wanted to base their prayer for an issue of writ, and, if they have failed to do so, it may be assumed that there must have been fifty or more employees engaged in the company.

8. The next question is whether the petitioner company is engaged in any industry specified in Schedule I of the Act. As already stated, the petitioner company manufactures high pressure incandescent lamps. Item 3 of Schedule I of the Act is electrical, mechanical or general engineering products and item 4 of that schedule is iron and steel. It is contended on behalf of the opposite party that the business in which the petitioner company is engaged comes both under items 3 and 4 referred to above.

In my opinion, the expression "electrical, mechanical or general engineering

products" is wide enough to include high pressure meandes-cent lamps. Moreover, by item U6; of the Explanation appended to the above schedule, it has been laid down that the expression "Electrical, mechanical or general engineering products" includes hurricane lanterns. It has, therefore been argued on behalf of the opposite party that the business of the petitioner company is included in the term "hurricane lanterns .

It has also been argued on their behalf that the business comes under the above item 4 of the schedule, namely, "Iron and Steel", which term, as I will presently show while dealing with another point, includes any manufactured products of, iron and steel. The argument is, in my opinion, well founded and must prevail. Lamp means, according to the Webster's dictionary, a vessel with a wick used for the combustion of oil or other inflammable liquid to produce artificial light, and by extension, any or various vessels, instruments, or devices for producing light or heat, as, an arc lamp, an incandescent lamp, a safety lamp, whereas lantern means something inclosing a light and protecting it from wind, rain, etc.: sometimes portable, as a closed vessel or case of horn, perforated tin, glass, oiled paper, or other material, having a light within.

Thus, It appears that the word "lantern" is a case inclosing a light, whereas a "lamp" is a vessel with oil and wick for giving light. In my opinion, therefore, the term "hurricane lanterns" used in item (16) of the Explanation of schedule I of the Act inclu3es incandescent lamps in manufacturing which the petitioner company is engaged. Apart from that the expression "incandescent lamps" can also be included in the term "any" manufactured products of iron and steel" referred to above.

That being the position, the petitioner company must be held to be engaged in an industry specified in Schedule T of the Act. In that view of the matter, the contention of Mr. Ghosh that Section 1(3) of the Act is not applicable to the petitioner company on the ground referred to above must fail.

9. The next point taken in support of the application is that no sanction for prosecution has been given by any competent authority and, therefore, the same is bad in law. Section 14(3) of the Act lays down that no court shall take cognizance of any offence punishable under this Act or under any Scheme except on a report in writing of the facts constituting such offence made with the previous sanction of such authority as may be specified in this behalf by the appropriate Government, by an Inspector appointed u/s 13.

In this case the sanction for prosecution for the period after 20-11-1954, has been given by Sri B. P. Singh I. A. S. and for the period before that date by Sri S. Neelakanthan, Deputy Secretary, Ministry of Labour, Government of India, and the complaints have been lodged by the Regional Provident Fund Commissioner, opposite party No. 1. It is contended on behalf of the petitioners that the industry in which the petitioner company is engaged not being a con-trolled industry. Sri S. Neelabanthan had no authority to accord sanction for the

prosecution.

As Section 14(3) quoted above provides for the sanction to be given by an authority as may be specified in this behalf by the appropriate Government, it has to be seen whether or not in this case Sri S. Neelakantan was authorised to give sanction by the appropriate Government. Section 2(a) defines "appropriate Government" to mean (i) in relation to a factory engaged in a controlled industry or in an industry connected with a mine or an oilfield the Central Government, and (ii) in relation to any other factory, the State Government.

Section 2 of the Industries (Development and Regulation) Act, 1951, declares that it is expedient in the public interest that the Union should take under its control the industries specified in the First Schedule and in that schedule item (4) is iron and steel and item (31) is hurricane lanterns. Explanation 1 to that schedule says that in item (4), "iron and steel" shall include any manufactured product of iron and steel.

I have already held that the business in which the petitioner company is engaged comes under these two items and is, therefore, a controlled industry. That being the position, the appropriate Government authorizing any person to give sanction is the Central Government.

10. By notification No. PF. 516 (28) published in the Gazette of India, dated 19-7-1952 at pages 1130-1 in part II, Section III, the Central Government in exercise of the powers conferred by Sub-section (1) of Section 13 of the Employees' Provident funds Act appointed Sri B. P. Singh, I. A. S., Bihar, to be an Inspector for the State of Bihar for the purposes of the said Act and of any Scheme made thereunder in relation to factories engaged in controlled industries and industries connected with mine or an oilfield .

This is annexure (a) to the counter-affidavit. By notification No. PF 516 (55") published in the Gazette of India, dated 29-11-1952, at page 1750, the Central Government, in pursuance of Sub-section (3) of Section 14 of the Employees' Provident Funds Act, specified the Commissioner for the Employees' Provident Funds appointed under sub-paragraph (1) of paragraph 19 of the Employees' Provident Funds Scheme, 1932, as the authority for the purposes of the said sub-section (annexure (b) to the counter-affidavit) and by notification No. PF 516 (175) published in the Gazette of India, dated 10-4-1954, at page 149 (annexure (c) to the counter-affidavit) Sri S. Neelakanthan, Deputy Secretary, Ministry of Labour, was appointed as Central Provident Fund Commissioner, Employees' Provident Funds Scheme at New Delhi with effect from the 1-4-1954, until further orders.

Later on, on the 30-11-1954, the Central Government, by notification published in Part II, Section 3 of the Gazette of India, dated 4-12-1954, directed that the powers exercisable by it as the appropriate Government under Sub-section (3) of Section 14 of the said Act to specify the authority to issue the sanction referred

to in the said sub-section shall also be exercisable within each of the States specified in the Schedule annexed thereto by the respective Government of each such States and Bihar is one of those States (annexure (d) to the counter-affidavit).

Thereafter on 10-10-1955, by notification published in the Bihar Gazette, on 2-11-1955, the Government of Bihar specified the Secretary to Government of Bihar, Labour Department, as the authority for the purposes of Sub-section (3) of Section 14 in respect of factories engaged in a controlled industry or in an industry connected with a mine or an oilfield (annexure (f) to the counter affidavit). From these notifications, therefore, it is manifest that the sanction for prosecution given in the present case is perfectly valid and the point taken by Mr. Ghosh has no substance.

11. The third point taken by Mr. Ghosh in support of the application is that the petitioners have all along been raising a dispute as to whether the provisions of the Act were applicable to the petitioner company, but the same has not been settled by the Central Government as required by Section 19A of the Act. This section reads as follows:

"If any difficulty arises in giving effect to the provisions of this Act, and in particular if any doubt arises as to-

(i) whether a factory is engaged in any Industry specified in Schedule I; or

(ii) whether fifty or more persons are employed in a factory; or

(iii) whether three years have elapsed from the establishment of a factory; or

(iv) whether the total quantum of benefits to which an employee is entitled has been reduced by the employer, the Central Government may, by order, make such provision or give such direction not inconsistent with the provision of this Act as appear to it to be necessary or expedient for the removal of the doubt or difficulty; and the order of the Central Government, in such cases, shall be final."

It is submitted that by the letters referred to above the petitioners have raised the point that fifty or more persons were not employed in the company and that it is not engaged in any industry specified in Schedule I of the Act and, as such, it was incumbent on the Central Government to give directions in that regard. I, however, am unable to agree with this contention.

The section, in my opinion, envisages a direction by the Central Government when any difficulty arises in giving effect to the provisions of the Act, and, if any doubt arises as to the matters referred to in that section in the mind of the authority who has to deal with the matter. If that authority does not feel any difficulty or has no doubt about any of the matters referred to in the section, there is no scope for any direction to be given by the Central Government at the instance of a party who may raise a dispute over the matter. The question of any dispute being raised by the party concerned, is foreign to the section,

12. Mr. Ghosh, however, in support of his contention has relied on the cases of *Ram Lal Gura Mal Textile Mills v. Regional Provident Funds Commissioner, Punjab* (1957) 12 FJR 115 (A), and *Annamalai Mudaliar and Bros. Vs. Regional Provident Fund Commissioner, Madras and Others*, . So far as the first case is concerned, I do not think that it is of any assistance to the petitioners and, in my opinion, it supports the contention of the opposite party.

In that case a writ application was made by certain mills for issue of a writ in the nature of mandamus directing the Government not to enforce the provisions of the Act against them. It appears that the Regional Provident Funds Commissioner, Punjab, called upon the mills to deposit the employees' and employers' shares of contributions and administrative charges from May, 1954, onwards. The mills objected to making this deposit on the ground that their employees were less than fifty.

On inspection of the books produced by the mills, the Inspector came to the conclusion that the petitioning mills were governed by the Act and the Regional Provident Funds Commissioner called upon them to deposit the required contributions and administrative charges failing which proceedings were to be taken against them under the provisions of the Scheme and the Act. The mills then represented their case to the Central Government u/s 19A of the Act, but the Central Government informed them to comply with the provisions of the Act as the strength of the employees in the factory was more than fifty persons.

The petitioner thereafter made a writ application and put forward a grievance that the Central Government did not give any opportunity to them u/s 19A of the Act to prove that the number of employees in the factory during the relevant period was less than fifty. The contention was rejected and it was held that that section did not provide for any inquiry into the matter and did not lay down that the factory was to be given an opportunity to present its case to the Central Government.

It was further held that the above section merely enabled the Government in case of difficulty or doubt to issue certain directions which are to be considered final and that in that case the Central Government did not consider that there was any difficulty or doubt in giving effect to the provisions of the Act. The writ application was, accordingly, dismissed. The other case, however, fully supports the contention of Mr. Ghosh.

In that case, it was held that the Employees' Provident Funds Act, 1952 provides for a specific machinery in Section 19A for the determination of a dispute as to whether certain factory is a factory within the scope of Section 1(3) of the Act. Rajagopalan J. (as he then was), relying on Section 19A of the Act observed that neither the Act nor the Scheme vests any power in the first respondent to adjudge a dispute should one arise, whether the factory is one to which the Act applied, that is, whether it is a factory within the scope of Section 1(3) of the Act and that the order of the Central Government not having been sought, the High

Court was justified in issuing a writ.

With utmost respect to his Lordship, I am unable to persuade myself to accept the correctness of that decision. His Lordship has decided the point by reading something into the section which is not there. The section, as already stated, does not contemplate of any dispute raised by the parties concerned, and, in that view of the matter, there is no point in referring the matter to the Central Government for a direction unless the authority concerned feels a doubt or finds a difficulty as provided in the section.

13. Lastly, it has been contended that the petitioner No. 1, at any rate, could not be prosecuted. The argument has been put forward in ignorance of the provisions of Section 14A of the Act. Sub-section (1) of that section states that if the person committing an offence under this Act or the Scheme made thereunder is a company, every person, who at the time the offence was committed was in charge of and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Petitioner No. 1 who is a resident of Ghat-sila where the company is located, on his own showing, is the managing agent of petitioner No. 2, the company. That being so, he is, under the above section, liable for prosecution.

14. The application fails on a preliminary ground as well. As already stated, there have been fifteen prosecutions lodged against the petitioners, but they have made only one writ application for quashing all those fifteen prosecutions. A Bench of this Court in *Bishwaranjan Bose v. Honorary Secretary, Ramkrishna Mission, Vivekanand Society, Jamshedpur*, MJC No. 187 of 1957, D/- 29-1-1958 (Pat) (C), has held that joint application for quashing several orders is not maintainable.

In that case four teachers whose services had been dispensed with by four different orders made one writ application for quashing those orders. It was held that the application was not maintainable. The same view has been taken in other courts also, for example, *Sri Shanmuga Rajeswara Sethupathi, Rajah of Ramnad Vs. State of Madras*, ; *Mandir Thakar Dawara, Dhuri v. State of Pepsu* AIR 1955 Pepsu 159 (E); and *Inder Singh and Another Vs. State of Rajasthan and Others*, .

15. For the reasons given above, there is no merit in the application, which is, accordingly, dismissed with costs. Hearing fee Rs. 100.

V. Ramaswami, C.J.

16. I agree.