
(1998) 03 KAR CK 0033
In the Karnataka High Court
Case No : Writ Appeal No. 132 of 1997

Binny Limited, Bangalore

APPELLANT

Vs

The Regional Provident Fund Commissioner, Bangalore and
Another

RESPONDENT

Date of Decision : 10-03-1998

Acts Referred:

Employees Provident Fund and Miscellaneous Provisions Act, 1952 — Section 1 (3), 17

Citation : (1998) ILR (Kar) 2709 : (1998) 4 KarLJ 544 : (1999) 1 LLJ 73

Hon'ble Judges : Mohamed Anwar, J; Ashok Bhan, J

Bench : Division Bench

Advocate : Sri K. Kasturi, for the Appellant; Sri Hari Krishna Holla, for the Respondent

Judgement

Ashok Bhan, J.

1. The only question that requires to be considered in this appeal is whether an exempted establishment u/s 17 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as "the Act") is bound to pay interest at the statutory rate at par with the scheme framed as per the provisions of the Act.

2. The brief facts are:

The appellant is a limited company having two textile mills, one in Madras and the other in Bangalore. The Bangalore Mill is a separate Company known as Bangalore Woollen, Cotton and Silk Mills Company Limited. This company and certain other companies were amalgamated in the year 1969 and after such amalgamation the new company is known as Binny Limited. Prior to its amalgamation the Bangalore Mill had its own provident fund which was managed by separate Trustees and was exempted u/s 17 from the provisions of the Act. The exemption was granted by the Government of India on 31st July, 1953 with effect from 1st November, 1952. It has been asserted by the appellant that from

the inception of the fund, the trustees of the funds have been investing money received by the fund in accordance with the pattern laid down by the Government of India. 40% of the amount has been invested in Government Securities yielding low rate of interest. The investments have been made as per the directions of the Government. The return of the investments at the relevant point of time was approximately 70 lakhs per annum which was distributed over the total contribution of 769 lakhs which works out to approximately 8.79% per annum as interest. Statutory rate of interest has been fixed at 10.15% for the year 1985-86. It is stated that the appellant cannot pay the rate of interest at par with the statutory rate of interest at a higher rate from what it receives on its investments and further that it is not in a position to pay 10.15% of interest declared by the Government of India.

Respondents in their written objections have stated that the employer is bound to comply with the statutory requirement and conditions subject to which the exemption from some of the provisions of Act and the Scheme is granted. Exemption u/s 17 of the Act is granted from the operation of all or any of the provisions of the scheme provided the benefit to the employees to be provided by the exempted establishment is not in any way inferior or lesser to the benefits conferred on the employer under the Act and the Scheme.

Learned Single Judge has dismissed the writ petition holding that the appellant having obtained exemption u/s 17 of the Act cannot pay less amount of interest than the statutory interest determined by the Central Government in consultation with the Central Board.

3. Provident Funds Act came into force on 4th March, 1952. The preamble of the Act states that it is an Act to provide for the institution of provident funds, family pension fund and deposit-linked insurance fund for employees in factories and other establishments. The Act by Section 1(3) makes it applicable to every establishment which is a factory engaged in any industry specified in Schedule I and in which 20 or more persons are employed and referred to in clause (b) employing 20 or more persons which the Central Government may, by notification in the Official Gazette, specify in this behalf. The Scheme u/s 5 along with other schemes were issued in the year 1952. Elaborate procedure has been laid down in the Act for implementing the provisions of the Act. Section 5 provides that the Central Government may by notification in the Official Gazette frame a scheme called "Employees' Provident funds Scheme for the establishment of provident fund under this Act for employees or any class of employees and specify the establishment or class of establishments to which the said scheme shall apply. Soon after the framing of the scheme the fund has to be established in accordance with the provisions of the Act and the Scheme. Section 17 speaks of exemption from the operation of the Act to the companies applying for it. Section 17 provides that the appropriate Government may by issuing a notification in the Official Gazette and subject to such conditions as may be specified exempt the establishments or factories from the operation of all or any

of the provisions of the scheme. The exempted establishments or companies are not required to deposit the amount of provident fund collected by them with the Provident Fund Commissioner. The said money can be invested by them subject to certain terms and conditions which may be imposed by the Government. Exemption u/s 17 of the Act is granted from the operation of all or any of the provisions of any scheme provided that the benefit to the employees to be provided by the exempted establishment is not in any way inferior to or lesser than the benefit conferred on the employees under the Act and the Scheme. Clause 60 of the Scheme provides:

"The Commissioner shall credit to the account of each member interest at such rate as may be determined by the Central Government in consultation with the Central Board".

For the year 1985-86 Central Government determined the statutory rate of interest at 10.15% per annum and the appellant was directed to deposit interest at that rate. According to the appellant the investment had been made as per the directions of the Government in low yielding securities which had been purchased many years ago. The interest earned on those securities approximately works out to 8.79% and the appellant cannot be asked to deposit more than what it has earned from its own pocket thereby making it to run in losses.

4. In the present case what has been done by the respondent-authorities is to intimate that the employer had not complied with the requirement of the scheme and lesser rate of interest was credited to the accounts of the employees on the provident fund amount than the rate of interest as determined under para 60 of the scheme. By the said communication the appellant-establishment has been made aware of its obligation under the Act and the Scheme and further they have been called upon to amend and grant the minimum benefit available under the Act and the Scheme to its employees.

5. In the case of *Mohmedalli and Others Vs. Union of India (UOI) and Another*, , it was held:

"It would appear from the terms of the relevant portion of Section 17 that the exemption to be granted by the appropriate Government is not in the nature of completely absolving the establishments from all liability to provide the facilities contemplated by the Act. The exemptions are to be granted by the appropriate Government only if in its opinion the exempted establishment has provisions made for provident fund, in terms at least equal, if not more favourable to its employees. In other words the exemption is with a view to avoiding duplication and permitting the employees concerned the benefit of the pre-existing scheme, which presumably has been working satisfactorily, so that the exemption is not meant to deprive the employees concerned of the benefit of a provident fund but to ensure to them the continuance of the benefit which at least is not in terms less favourable to them. As the whole scheme of provident fund is intended for the benefit of employees, Section 17 only saves pre-existing schemes of

provident fund pertaining to particular establishments".

Similarly in N.K. Jain and others Vs. C.K. Shah and others, , the Supreme Court reiterated the same view in its judgment. It was held:

"It therefore cannot be gainsaid that the context in which these words are used is significant. At this juncture we may also note that the scheme or rules framed by a company in respect of the provident fund of the employees are meant to be duly complied with. The exemption u/s 17 is incorporated in the Act for getting better benefits for the employees and the same is granted with a view to avoiding duplication that is to say for framing a scheme by the appropriate Government on the lines as framed by the establishment itself and such an exemption is meant to ensure to the employees the continuance of the benefits and the purpose of the exemption is only to ensure such a scheme better than the one u/s 6 of the Act. It must also be noted that notwithstanding the exemption granted u/s 17 of the Act the appropriate Government does not lose its hold over the scheme framed by the establishment and there are built-in safeguards in Section 17 itself to protect the interests of the employees and Section 17(4) is one such safeguards".

6. Appellant sought for and was granted exemption u/s 17. One of the conditions in Section 17 is that the benefits provided to the employees by the exempted establishment cannot be in any way inferior or lesser than the benefits conferred by the employer under the Act and the Scheme. Annexure-R is the notification granting exemption to several factories including the appellant, from the operation of the Act. In Schedule II to Annexure-R, it is specifically stated that the benefit provided to the employees of an establishment which has been given exemption u/s 17 cannot be in any way less favourable in relation to the employees in any other factory of a similar character. Had the appellant not taken exemption then the provident fund collected would have been deposited with the Provident Fund Commissioner who would have paid the statutory interest. After seeking and getting exemption the appellant cannot be heard to say that it would pay less than the statutory rate of interest to their employees to their detriment especially when the exemption was granted to it subject to the condition that the employees of the exempted establishments shall not be given benefits in any way inferior to or lesser than the benefits conferred on the employees under the Act and the Scheme. Para 60 of the scheme makes it obligatory on an employer to pay statutory rate of interest as determined by the Central Government in consultation with the Central Board. The employer of the exempted company is bound to comply with the requirements of the Act and Scheme subject to which the exemption from some of the provisions of the Act and the Scheme were granted.

7. Employer is seeking to avoid its obligations towards the employees and wants to deprive them of the benefits, whereas the whole thrust of the Act and object is to confer the benefits to the employees. Appellant cannot be permitted to defeat the same by seeking a prerogative writ from this Court. The appellant who

sought for exemption is bound to abide by the Act and the Scheme and the conditions subject to which exemption is granted and cannot be permitted to turn around and seek the relief contrary to the same. Exemption u/s 17 is granted subject to the condition that the employees of the exempted establishment shall not be given benefit less favourable than the employees of the other establishments which are covered under the Act and the Scheme. It is a condition precedent that exemption is available to only such establishments which provide better benefits and not otherwise. Having regard to the entire object of the Act, Scheme and the provisions regarding the conditions to be imposed for exemption can only be to add to the advantage of the employees and not to their detriment. If the Provident Fund Authorities have called upon the appellant-establishment to maintain the minimum benefits available under the Act and the Scheme, they are well within their powers and in fact acting under a duty to ensure the effective implementation of the Act and the Scheme.

8. Appellant cannot be put at liberty to declare lesser rate of interest to the credit of the members' accounts at such rates as is possible for the employer. Exempted establishments cannot be permitted to credit interest annually at a rate lesser than the rate provided u/s 60 of the Scheme. The rate of interest as determined by the Central Government in consultation with the Central Board is uniformly applicable and has to be enforced and implemented uniformly in respect of all establishments. There is nothing peculiar to the appellant-establishment alone. When such condition operated on all other exempted establishments, there is absolutely no justification to entertain the plea and grant relief which would relieve the appellant of such an obligation.

9. No doubt the investments made by the appellant-company are in accordance with the direction issued by the Central Government. However, the benefits prescribed under the scheme is minimum and that cannot be denied to its employees. Provident Fund Act is a beneficial statute enacted for the benefit of the employees and it has to be construed to say as to the object with which it was passed. Any construction which would facilitate the evasion of statutory benefit under the Act to the detriment of the employees has to be avoided. Appellant having obtained exemption u/s 17 of the Act cannot contend that the provisions of Para 60 of the Scheme would not be applicable to them and they would be declaring the interest at a rate as is possible to them. In that view of the matter the endorsement of the Provident Fund Commissioner to the appellant to credit to the employees-members account interest annually at the rate not lesser than the rate determined under Para 60 of the Scheme cannot be taken exception to by this Court.

For the reasons stated above the order under appeal is upheld and the appeal is dismissed with no costs.