(1985) 04 MAD CK 0001

In the Madras High Court

Case No : Criminal Revision Petition No. 241 of 1981 and Criminal Revision Case No. 247 of 1981

Buhari Hotels and Motels (P.) Ltd., A.M. Buthari — APPELLANT

Vs

The Provident Fund Inspector, 5th Division, Madras — RESPONDENT

Date of Decision : 04-04-1985

Acts Referred:
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14

Citation : (1985) LW(Cri) 339

Hon'ble Judges : S.A. Kader, J

Bench : Single Bench

Advocate : V. Srinivasan, for the Appellant; V. Vibhishnan, for the Respondent

Judgement

S.A. Kader, J.—This revision is directed against the judgment of the first Additional Sessions Judge, Madras in C.A. No. 356 of 1980

confirming the conviction imposed upon the revision Petitioners by the III Metropolitan Magistrate, George Town, Madras, u/s 14 of the

Employees, Provident Funds and Miscellaneous Provisions Act, 1952, hereinafter referred to as the Act read with paragraph 76-B of the Scheme

framed thereunder and the sentence of fine of Rs. 50 on each count.

2. The Respondent /Provident Fund Inspector, fifth Division, Madras launched criminal prosecutions against the revision Petitioners 1 and 2 in

C.C. Nos. 561 to 593 of 1978 under Ss. 14(1)(a), 14-A and 14(2) of the Act read with paragraph 76-B and(D) of the Scheme framed

thereunder, in respect of failure to submit the returns under Forms V, X, XII, etc., and failure to pay the contributions payable under the Act for

the periods ranging from October, 1974 to June, 1978. There were as many as 83 counts of charges. The learned III Metropolitan Magistrate found both the revision Petitioners guilty in all the eighty-three counts in 33 cases and sentenced the accused 1 and 2 to pay a fine of Rs. 50 under

each count or in default to undergo simple imprisonment for a period of three weeks under each count. Aggrieved thereby the accused preferred

C.A. No. 356 of 1980 before the Court of Sessions, Madras. The learned I Additional Sessions Judge found that the revision Petitioners were not

liable for the charges relating to the periods prior to 1st December, 1976 and acquitted them in C.C. Nos. 569, 577 to 582, 590 and 591 of 1978

and also in respect of the charges prior to 1st December, 1976 in C.C. Nos. 570 and 583 of 1978. He confirmed the conviction in respect of the

charges for the period subsequent to 1st December, 1976 in C.C. Nos. 576 and 583 of 1978 and in the other cases. Hence this revision.

3. The only point which is canvassed before me and which arises for consideration is whether the first revision Petitioner M/s. Buhari Hotels &

Motels Private Limited of which the second revision Petitioner is the Managing Director, is a new establishment coming within the purview of the

Act and the Scheme framed thereunder.

4. It is contended on behalf of the revision Petitioners that the original establishment was M/s. Buhari Sons Private Limited, that this establishment

has been split up and the first revision Petitioner/the first accused- M/s. Buhari Hotels & Motels Private Limited is a new establishment and it does

not come under the mischief of this Act as at no time it had employed 20 or more persons. It is not disputed before me and it is also well

established that the first revision Petitioner is not employing 20 or more persons as is evident from Exs.D1 and D2, registers of wages. But, the

plea of the Respondent complainant is that the original establishment M/s. Buhari Sons Private Limited was governed by the Act and contributions

had been made by the said establishment and the first revision Petitioner M/s. Buhari Hotels & Motels Private Limited is only a successor-in-

interest of the original establishment and as such it is not entitled to claim that it is outside the purview of the Act merely because the number of

employees are less than 20. S.l(v) of the Act is relied on to show that an establishment to which this Act applies, shall continue to be governed by

this Act notwithstanding that the number of persons employed therein at any time falls below 20, and it is also urged that any transfer of ownership or change of management of an establishment will not take it out of the ambit of the Act-vide State of Punjab Vs. Satpal and Another, , and

Lakshmi Rattan Engineering Works v. The Regional(sic) Provident Fund Commissioner, Punjab 1966 Vol. XII Indian Factories and Labour

Reports (S.C.) 299 : 1966 1 Lab. L.J. 741. But the question which arises here is as to what was the original establishment, what is the present

establishment and whether they are the same.

5. Admittedly the original establishment to which the provisions of the Act were applied was M/s. Buhari Sons Private Limited. This establishment

was the proprietor of several concerns, viz., Aaram Buhari Hotels and Bakery, Central Buhari Hotel, Buhari''s Regal Garden Restaurant and Hotel

Imperial as is evident from Exs.P14 and P15 letterheads of Buhari Sons Private Limited. On and from 1st December, 1976 the first revision

Petitioner-M/s. Buhari Hotels & Motels Pvt. Limited took over the business of one of the concerns of M/s. Buhari Sons Private Limited, viz.,

Buhari Hotel at 246, N.S.C. Bose Road, Madras-1 on lease, and the licence for this business had been transferred in favour of the first revision

Petitioner. Ex.D5 is the application for transfer of licence sent to the Corporation by the first revision Petitioner. This is therefore a case where the

original establishment, viz., M/s. Buhari Sons Private Limited has been split up and one of the concerns run by the original establishment has been

taken over by the first revision Petitioner, M/s. Buhari Hotels & Motels Private Limited, while the original establishment, viz., M/s. Buhari Sons

Private Limited has continued the business of the other concerns. Such a case of disruption of the original establishment is governed by the

principle of the decision of the Division Bench of Kerala High Court in Zainulabdeen v. The Regional Provident Fund Commissioner 1975 Lab.

I.C. 4l2:Indian Factories and Lab. Reports 19. and of the decision of this Court in Jagie Gounder, v. The Regional Provident Fund Commissioner

95 Law Weekly 376. As pointed out by the Kerala High Court in Zainulabdeen v. The Regional Provident Fund Commissioner, an establishment

need not in all circumstances continue to be the same establishment; a disruption of that establishment is possible on a real and bona fide partition

of the estate. In Jagie Gounder v. The Regional Provident Fund Commissioner 95 Law weekly 376., Nainar Sundaram, J., has observed as follows:

There is no rule that could be spelt out from the provisions of the E.P.F. and M P, Act that an establishment covered by the Act/Scheme cannot be

split up, and that in spite of such split up, the Act/Scheme which was earlier applied to the original establishment will continue to apply to the split-

up entities even though each or all of them would not come within the category of establishment, to attract the provisions of the Act/Scheme. A

disruption of the establishment is possible and if the disruption is real and bona fide, then the test that has got to be applied is to find out as to

whether the split up establishments will be independently covered by the provisions of the Act/Scheme. If the disruption, by whatever manner it is

effected, is a ruse or a camouflage to go out of the ambit of the provisions of the Act/Scheme then it will be legitimately ignored.

In that case before Nainar Sundram, J., the Petitioner was treated as an employer in relation to the establishment M/s. Forestdale Estate and Tea

Factory and was covered by the provisions of the Act. On 1st November, 1979 the tea factory was closed and was subsequently sold to one

Smt. Janaki Sundararajan. The Petitioner continued to retain, man and manage the Forestdale Estate alone. The Respondent wanted to apply the

provisions of the Act to the Forestdale Estate and the Petitioner contended that the strength of the employment of the Forestdale Estate was less

than 20 and the provisions of the Act were not attracted. This stand of the Petitioner was not accepted by the Respondent/ Provident Fund

Commissioner. This Court held that the Forestdale Estate, which alone was retained and managed by the Petitioner and employed less than 20

persons, was the split-up of the originale-stablishment, and did not attract the provisions of the Act. The facts of the case before me are on all fours

with the decision in Jagie Gounder v. The Regional Provident Fund Commissioner 95 Law weekly 376.

The original establishment of M/s. Buhari Sons Private Limited which controlled several concerns has been disrupted and one of the concerns, viz.,

Aaram Buhari Hotel in N.S.C. Bose Road has been taken over by the first revision Petitioner. There is nothing to show that the split-up is a ruse or

a camouflage to escape the provisions of the Act. The first revision Petitioner has, therefore, to be considered as a new establishment and the provisions of the Act will apply to it only if it employs 20 or more persons, The unreported decision of Mohan, J., in M/s. Conveyor Equipment

Company Private Limited v. Union of India and another W.P. No. 627 of 1975. has no application to the facts of this case. There, the Petitioner

M/s. Conveyor Equipment Company Private Limited took over on lease from M/s. Veekay Engineering Industries the site, the buildings and

machinery while M/s. Veekay Engineering Industries retained only the business of rendering services as technical consultants. The entire factory

was thus taken on lease by the Petitioner M/s. Conveyor Equipment Company Private Limited and it was therefore considered to be not a new

establishment. The question of disruption of the original establishment did not arise and was not considered in the said decision. In the case on

hand, there has been a clear split-up or disruption of the original establishment, viz., M/s. Buhari Sons Private Limited and the first revision

Petitioner M/s. Buhari Hotels & Motels Private Limited has taken over the management of only one of the many concerns manned by the original

establishment M/s. Buhari Sons Private Limited. I therefore hold that the first revision Petitioner, M/s. Buhari Hotels & Motels Private Limited is a

new establishment.

6. Ex. D2 wage register, and Ex.D3, employment register of the first revision Petitioner, M/s. Buhari Hotels & Motels Private Limited, show that

less than 20 persons alone have been employed. D.W. 1, who is the accountant of the first revision Petitioner has spoken to the fact that not more

than 18 persons were employed at any time and there has been no cross-examination on that point. It follows that the first revision Petitioner/the

first accused is not an establishment coming within the purview of the Act.

7. In the result, the revision is allowed, the conviction and sentences imposed upon the revision Petitioners are set aside and they are acquitted. The

fines, if paid, will be refunded to the revision Petitioners.