(1978) 10 MP CK 0007

In the Madhya Pradesh High Court

Case No : M.P. No. 299 of 1972

Christian Association for Radio and Audio-Visual Service, Jabalpur	APPELLANT
Vs	
Regional Commissioner, Employees Provident Fund, Indore	RESPONDENT

Date of Decision : 24-10-1978

Acts Referred:
Constitution of India, 1950 — Article 226, 227
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 1(3), 2(j), 7A(3)

Citation : (1979) JLJ 638

Hon'ble Judges : C.P. Sen, J;B.C. Verma, J

Bench : Division Bench

Advocate : Gulab Gupta, for the Appellant; R.P. Sinha, for the Respondent

Final Decision : Dismissed

Judgement

C.P. Sen, J.—This is a petition under Articles 226 and 227 of the Constitution for quashing the order of the respondent holding that the petitioner is governed by the Employees Provident Fund Act, 1952, and the scheme framed thereunder and further directing the petitioner to make payment of Rs. 35,644 towards provident fund of its employees.

2. The petitioner is a society registered under the Societies Registration Act, 1860. As per Memorandum of Association, its object is to render specialized service to the Christian Churches and Institutions in India in the field of Radio, Television and Audio-Visual Aids, mainly to assist churches and christian agencies in the total task of church by promoting use of radio television and audio-visual aids by producing, securing and distributing audio-visual material such as films, non-projected pictures, phonograph records, books and pictures. It is wholly dependant on the benevolent, and grants received from several churches and other charitable church-related organizations. It is not being run on commercial lines. There are about 42 persons on its permanent employment and each of the

employee is contributing at the rate of 1/10 of his basic salary towards provident fund and the petitioner is making equal contribution The petitioner has already deposited 1 lac 5 thousand in the provident fund account in the Allahabad Bank. Whatever income is derived is applied solely to the promotion of the objects of the society and no portion of it is paid by way of dividend, bonus etc. to its members except the salaries which are paid to its employees. In fact, whatever little income is derived by way of normal service charges is quite inadequate even to maintain the equipments used in service works. The petitioner is a cultural organization and its function is to help churches and other Christian organizations in propagating the Christian religion. The petitioner, therefore, is not a trading and commercial organization. However, by memo dated 25-7-70 the respondent informed the petitioner that the Act and the Scheme framed thereunder are applicable to it from 31-1-68 as per Government Notification dated 7th March 1962 which came into effect from 30-4 62. He also requested the petitioner to implement the various provisions of the Act and the Scheme in its establishment with effect from 1-2-68. The respondent was of the opinion that the petitioner is covered under the Schedule Head ''Trading and Commercial Establishment''. The petitioner lodged an objection and contended that the petitioner cannot be brought under the purview of Schedule Head ''Trading and Commercial Establishment''. It is a non-commercial and non-profit making church related organization, but the respondent did not agree with the contention of the petitioner and directed it by memo dated 28-3-72 to deposit Rs. 35,644 u/s 7-A(3) of the Act. The petitioner thereafter filed this petition.

3. The respondent in its return has submitted that as per the declaration given by the petitioner under Form Annexure X dated 2 5 69, the petitioner-Society besides showing films and producing radio programmers, it sells books and pictures. It also rents out films to members on nominal charges and to non-members on full fees. The petitioner has been rightly brought under the purview of the Act and the Scheme as it is a trading and commercial establishment. The Memorandum of Association of the petitioner is not a deciding factor for applicability of the provisions of the Act. The Act does not make any distinction between a trading establishment run on profit with those running on no profit basis. The applicability of the provisions of the Act have no relation to the nature of the source of income of the petitioner and the provisions of the Act are applicable because of the nature of the work done by the petitioner.

4. As per section 1(3) of this Act it applies to (a) every establishment which is a factory engaged in any industry specified in Schedule I and in which 20 or more persons are employed and (b) 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 this behalf. The Government Notification date 7-3-62 is as under :

G.S.R. 346. In exercise of the powers conferred by clause (b) of sub-section (3) of section I of the Employee''s Provident Funds Act, 1952 (19 of 1952), the

Central Government hereby applies the said Act, with effect from the 30th April, 1962, to every trading and commercial establishment employing twenty or more persons each and engaged in the purchase, sale or storage of any goods, including establishments of exporters, importers, advertisers, commission agents and brokers, and commodity and stock exchanges, but non-including banks or were houses established under any Central or State Act.

The main question is whether the petitioner is a trading and commercial establishment and covered under this notification.

5. It is nobody''s case that the petitioner is a factory and, therefore, clause (a) of section 1(3) has no application. Under clause (b) any establishment or class of establishment can be brought within the purview of this Act by the Central Government by notification in the official gazette. According to the Oxford Dictionary ''establishment'' means organized body of men maintained for a purpose. Power has been given to the Central Government under this clause to make any establishment governed by this Act. ''Establishment'' under the clause means an organisation employing persons between whom relation of employer and employee exists. It means an organisation which employees a certain number of persons and nothing more. So no limitation can be placed on the word ''establishment'' that it must be carrying on a particular kind of business. It would cover establishment not run on profit motive also. Therefore, there can be no difficulty in holding that the petitioner is an establishment, but the question remains as to whether it is a trading and commercial establishment as per notification dated 7-3-62. Under the notification, only trading and commercial establishments employing 20 or more persons and engaged in the purchase, sale or storage of any goods have been notified to be governed by the Act. Dictionary meaning of ''trade'' is business especially mechanical or mercantile employment opposed to profession, while dictionary meaning of ''commerce'' is exchange of merchandise especially on a large scale. The words ''trading and commercial establishment'' have not been defined in the Act, As has been pointed out in the return, it is a beneficial legislation to provide for the purpose of institution of Provident Fund and Family Pension Fund to employees in factories and other establishments. ''Industry'' under the Industrial Disputes Act, 1947 means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen. The definition of ''industry'' has been subject matter of review in series of cases by the Supreme Court and the matter is now finally decided by the Supreme Court in Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others, . In this decision of 7 Judges, previous six decisions of the Supreme Court have been overruled. The Supreme Court has now held :

''Industry'' as defined in section 2(j) has a wide import. Where there is (i) systematic activity, (ii) organized by cooperation between employer and employees (the direct and substantial element is commercial), (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss e.g. making, on a large scale, Prasad or food), prima facie, there is an ''industry'' in that enterprise.

Absence of profit motive or gainful objective is irrelevant, be the venture in the public, joint, private or other sector.

The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations.

If the organization is a trade or business it does not cease to be one because of philanthropy animating the undertaking.

6. The word ''trade'' has been defined by Lord Wright in National Association of Local Govt. Officers v. Bolton Corporation (1943) AC 166 as under:

Indeed ''trade'' is not only in the etymological or dictionary sense, but in the legal usage, a terra of the widest scope- It is connected originally with the word ''trade'' and indicates a way of life or an occupation. In ordinary usage it may mean the occupation of a small shop-keeper equally with that of a commercial magnate. It may also mean a skilled craft. It is true that it is often used in contrast with a profession. A professional worker would not ordinarily be called a tradesman, but the word ''trade'' is used in the widest application to the appellation ''trade unions''.

The word ''trade'' is used in the very wide connotation which it bears in the modern legislation dealing with conditions of employment particularly in relation to matters of collective bargaining and the like.

Quoting this decision with approval, the Supreme Court in D.N. Banerji Vs. P.R. Mukherjee and Others, , has observed Legislation had to keep pace with the march of times and to provide for new situations. Social evolution is a process of constant growth, and the State cannot afford to stand still without taking adequate measures by means of legislation to solve large and momentuous problems that arise in the industrial field from day to day almost." The Supreme Court in another case of The State of Bombay and Others Vs. The Hospital Mazdoor Sabha and Others, has observed as under :

The conventional meaning attributed to the words ''trade and business'' has lost some of its validity for the purpose of industrial adjudication. Industrial adjudication has necessarily to be aware of the current of social-economic thought around, it must recognise that in the modern welfare State healthy industrial relations are a matter of paramount importance and its essential function is to assist the State by helping a solution of industrial disputes which constitute a distinct and persistent phenomenon of modern industrialised States. In attempting to solve industrial disputes industrial adjudication does not and should not adopt a doctrinaire approach. It must evolve some working principles and should generally avoid formulating or adopting abstract generalisations. Nevertheless it cannot harp back to old-age notions about the relations between employer and employee or to the doctrine of laissez faire which then governed the regulation of the said relations. That is why, we think, in construing the wide words used in S. 2(j) it would be erroneous to attach undue importance to attributes associated with business or trade in the popular mind in days gone by.

The aforesaid decisions have been quoted with approval by the Supreme Court in Bangalore Water Supply case (Supra) and it has been further observed "In short ''trade'' embraces functions of local authorities, even professions thus departing from popular notions."

7. Thus, we have to give widest connotation to the words ''trading and commercial establishment'' as mentioned in the notification in question. This will include an establishment which is run on no loss no profit basis and will also include an establishment which is run with the aid of others like the petitioner. The petitioner is not a spiritual or religious organisation but it is a trading and commercial establishment dealing with storage and sale of books and pictures and also renting out films on nominal charges to its members and on full fees to non-members. We must have regard to the nature of the activity of the petitioner and the activity is to render specialised service to the Christian Churches and Institutions in India in the field of radio, television and audio-visual aids by selling books and pictures and renting out films. If these activities were carried out by an individual, it would have been a trading and commercial establishment. So there is no reason why simply because the petitioner society is being aided by other churches and other charitable church-related organizations, it would cease to be a trading and commercial establishment. There is a systematic activity in pursuance of the object of the petitioner-society. The petitioner has about 42 persons on its permanent employment and there is organized co-operation between the petitioner and its employees for the production and distribution of goods and services calculated to satisfy human wants and wishes. The Supreme Court in Bangalore Water Supply case (supra) has further observed as under :

If, in a pious or altruistic mission many employ themselves, free or for small honoraria or like return, mainly drawn by sharing in the purpose or cause, such as lawyers volunterring to run a free legal services clinic or doctors serving in their spare hours in a free medical centre or Ashramites working at the binding of the holiness, divinity or like central personality, and the services are supplied free or at nominal cost and those who are not engaged for remuneration or on the basis of master and servant relationship, then the institution is not an industry even if stray servants manual or technical, are hired. Such eleemosynary or like undertakings alone are exempt-not other generosity compassion, developmental passion or project.

We are, therefore, inclined to hold that the petitioner society is a trading and commercial establishment and comes within the purview of the notification dated 7-3-1962.

8. As a result, the petition fails and it is dismissed. In the circumstances, there shall be no order as to costs.

