
(1976) 02 BOM CK 0048
In the Bombay High Court
Case No : Petition No. 1654 of 1975

Consolidated Crop Protection Pvt. Ltd.	APPELLANT
Vs	
V. Hema Chandra Rao	RESPONDENT

Date of Decision : 06-02-1976

Acts Referred:

Employees Provident Fund and Family Pension Act, 1952 — Section 12

Citation : (1976) 78 BOMLR 246 : (1977) 1 LLJ 114

Hon'ble Judges : B.N. Deshmukh, J

Bench : Single Bench

Judgement

1. A very short question arises in this petition as to the correct meaning of S. 12 of the Employees' Provident Funds and Family Pension Fund Act, 1952 (Act 19 of 1952) (hereinafter referred to as the "Provident Fund Act").

2. Very few facts which deserve to be noted and which do not seem to be in dispute are these : The Provident Fund Act became applicable some time in the year 1952. The petitioners had their factory at Santacruz and the head office at Tarabaug Estate, Charni Road, Bombay. The Provident Fund Act was obviously applicable to the factory and the head office of the petitioners. The petitioner-company, however, applied on June 24, 1964, to the Regional Provident Fund Commissioner for exemption from the statutory scheme of 1952 because they had their own voluntary Provident Fund Scheme, which was more beneficial to the employees at both the places. It was pointed out that the contribution of the employees was 12 1/2 per cent and that of the employers was 10 per cent of the total wages under the voluntary Provident Fund Scheme. As the rates at which contributions required to be made under the statutory scheme were only 8 per cent on either side, it was obvious that voluntary scheme was more beneficial to the employees. Exemption was thus granted by letter dated May 29, 1966, with effect from July 1, 1964.

3. A similar order recognizing the scheme was passed by the Income Tax Commissioner by his letter dated March 15, 1966. To that voluntary scheme the

Regional Provident Fund Commissioner allotted a number as being No. MH/5651 and the payments were continued as per the voluntary scheme.

4. As it happened, the factory were of the petitioner-company at Santacruz was closed down from December 1, 1968. All the employees from the factory were thus retrenched from the service of the factory. Some employees in the head office, however, continued and in relation to them the same voluntary Provident Fund Scheme was continued and payments were being made by way of contribution of the employer as well as the employees under the same old Code No. MH/5651.

5. On November 11, 1971, the petitioner took over the factory of Pioneer Chromate Works, a division of Bharat Pulverizing Mills Ltd. This factory employed about 130 workers at the factory site at Andheri (East). So far as this unit of factory at Andheri was concerned, it automatically fell under the provisions of the Provident Fund Act and the statutory scheme became applicable as a matter of law. The petitioners did make their contribution as well as those of the employees under the statutory scheme of 1952 and wrote to the Regional Provident Fund Commissioner for allotting a new code number with respect to the new factory started at Andheri. This seems to have been done and Code No. MH/12407 has been allotted so far as the Andheri factory is concerned. There is no dispute that so far as the workers at the Andheri factory are concerned, the contribution of the company is 8 per cent and that of the employees is also 8 per cent and the statutory scheme is being implemented.

6. On or about November 9, 1971, the petitioner-company applied for cancellation of the exemption granted in respect of the employees working at the head office. This application was made under para 27 of the Employees' Provident Funds Scheme, 1952. By Ext. 2 to the affidavit in reply to the petition the respondents have produced letter dated January 12, 1972, granting the cancellation of the exemption. The letter further directs the petitioner to implement the statutory scheme, now that the exemption from that scheme stands cancelled. By another letter dated January 12, 1972, Ext. B to the petition, the Regional Provident Fund Commissioner called upon the petitioner to transfer all the funds under the voluntary provident fund scheme with the company to the appropriate account with the Regional Provident Fund Commissioner.

7. There is no dispute that the accumulated funds have been transferred and some contributions subsequently are also being credited with the Regional Provident Fund Commissioner. However, when exemption earlier granted was cancelled with effect from January 1, 1972, the petitioners started crediting only 8 per cent as their own contribution and also Credited only 8 per cent of the total wages as contributions of their employees at the head office. When this fact was noticed by the Department they started correspondence and called upon the petitioners to continue to credit the contribution of the employees at 12 1/2 per cent and their own contribution at 10 per cent in spite of the fact that the

exemption earlier granted stands cancelled from January 1, 1972.

8. The petitioners took up position in the correspondence that the voluntary scheme is no more in operation and what governs the employees is the statutory scheme. The contribution made according to the requirements of that statutory scheme should be considered sufficient compliance with the provisions of law. The petitioners called upon the Regional Provident Fund Commissioner to decide this dispute or give his judgment or finding on this query raised. The Regional Provident Fund Commissioner wrote to the petitioner that the issue itself was referred to the Central Provident Fund Commissioner and after the Central Provident Fund Commissioner expresses his views on the matter, the petitioners would be given the appropriate reply. In due course after receiving the opinion of the Central Provident Fund Commissioner, the Regional Provident Fund Commissioner wrote to the petitioners that in spite of the cancellation of the exemption the liability of the company to contribute at the old rate of 10 per cent as under the voluntary scheme, and the liability of the employees to contribute at 12 1/2 per cent as under the old scheme, still exists as an indisputable liability because of the provisions of S. 12 of the Provident Fund Act. The petitioners are, therefore, called upon to make up all the arrears accordingly, otherwise appropriate action would be taken for recovery. It is at this stage that the petitioner-company has filed this petition.

9. The substantial dispute relates to the meaning and interpretation of S. 12 of the Provident Fund Act. However, during the course of the arguments, it was sought to be urged that the petitioners had raised a dispute about the interpretation of S. 12 and the nature of their liability thereunder. The decision of the Regional Provident Fund Commissioner could be treated as quasi-judicial as it determines the civil liability of the petitioners. Even if they were to be treated as administrative decision, it had created in effect a civil liability of the petitioners. It was incumbent under the circumstances for the Regional Provident Fund Commissioner or the Central Provident Fund Commissioner, as the case may be, before deciding the issue to have given a hearing to the petitioners before they insisted upon recovery at 12 per cent and 10 per cent as contribution of employees and employers respectively. The second point urged is that on a true construction of the provisions of S. 12 when the effect of cancellation of the exemption if the application of statutory scheme, the contributions of the employees and the employers must now be deemed to have been reduced to the rates provided by the statutory scheme. The petitioner have provided after commencing of the factory at Andheri more benefits to the persons at the head office. It may incidentally be noted that the present dispute is confined to the contribution of the employees at the head office, and the employees at the factory at Andheri are not at all concerned with this dispute. Since other beneficial schemes are now introduced by the scheme which are extended to the employees at the head office, it would be enough that the total benefit of all these schemes including the provident fund contribution is either equal to or not less than the total benefit under the voluntary scheme then in force. Whether the

company is in fact doing so or not, would be a disputed question of fact for which the appropriate authority, viz., the Regional or Central Provident Fund Commissioner, ought to have given hearing and should have permitted evidence to be led. At that hearing not only the petitioners would have satisfied the Regional Commissioner about the true meaning of S. 12 and the affect thereof, and also would have provided by evidence that the total benefits which are now being made available to the employees at the head office are in no way less than the voluntary provident scheme.

10. During the course of hearing when I pointed out to Mr. Shetye, the learned counsel for the petitioners, that S. 12 itself would be interpreted on hearing the arguments and if the liability under that section is now clarified, there is no need to send back the matter to the Commissioners and occasion for giving a hearing would not arise at all. On behalf of the respondents the petitioners' right to be heard itself is being challenged. However, I think that it is not necessary to decide that issue in this litigation, as I have heard both the parties and I am construing the provisions of S. 12 of the Provident Fund Act, which would hereafter guide the actions of both the sides as being the law laid down for this State.

11. Before the provisions of S. 12 are construed, it may be borne in mind that every establishment which falls within the purview of the Provident Fund Act the statutory scheme of the year 1952 automatically applies. It is permissible for employees individually to apply and get exemption from the scheme. This is contemplated by para 27 of the 1952 Scheme. Provisions of para 27 of 1952 Scheme make it clear that where a voluntary scheme already in existence or later on framed by the employees and the employers appears to be more beneficial to the employees it is permissible for the Regional Provident Fund Commissioner to grant exemption to the employee or a class of employees from the operation of the statutory scheme. There are of course certain conditions laid down in sub-para (2) of para 27 where the employer has to maintain certain types of account for exemption from the statutory scheme. When the provisions of the Act making the statutory scheme compulsory are read along with the provisions to grant exemption from the statutory scheme under certain circumstances, the intention of the legislation appears to be clear. Where inadequate benefits were there, the Legislature desired that the minimum benefit of provident fund ought to be in the form of contribution at 8 per cent on either side. Where, therefore, the establishments were giving benefit of provident fund which was less than what the statutory scheme envisages, the establishments were bound to follow the statutory scheme. Where, however, better managed companies and establishments were already in a position to offer better and more benefits to their employees in the form of provident fund and other schemes like gratuity and old age pension, the intention of the Legislature was not to reduce those benefits and to bring them somehow at the statutory rate of 8 per cent on either side. On the contrary the intention of the Act is, where better benefits are available they should be maintained and continued to be

made available to the employees. Paragraph 27 of the 1952 Scheme, therefore, is an enabling paragraph permitting the provident fund scheme to allow more fortunate employees to continue to get the same benefit. Hence, as a technical measure, exemption is granted from the statutory scheme but the voluntary scheme with the reservations mentioned in that paragraph has got to be enforced under the control of the respective Provident Fund Commissioners. Not only accounts must be maintained but contribution must be accordingly credited in the appropriate account.

12. I might consider at this juncture a question relating to the quantum of contribution to be made by an employee. It is a well-known concept in the provident fund schemes that the employee concerned is permitted to vary his contribution within certain limits. A certain minimum is usually provided as a norm, below which the employee cannot be permitted to reduce his contribution. If he, however, wants to increase it, that is permitted to be done under the rule at a proper time during the year. If, however, the extra contribution which was being permitted to an employee is found to be heavy by him and he wants to reduce it, there is provision usually in all the schemes to provide such reduction but not below the statutory minimum. Such a provision finds place in the 1952 Employees, Provident Funds Scheme also and para 29 permits an application being made by an employee for reducing his own contribution.

13. It is the case of the petitioner that on a true construction of the provisions of S. 12, the moment the earlier exemption was cancelled, the employer and the employee were both liable to contribute only 8 per cent according to the statutory scheme and not according to the old rates. Even if this is not to be accepted, the employees are alleged to have applied for reducing their contribution to the statutory minimum of 8 per cent. In any case, when such an application is made by the employees who were making higher contribution at least from that point of time, the liability of both the employees and the employers should be deemed to have been reduced to 8 per cent according to the statutory scheme. It is the argument of Mr. Shetye which has to be tested against the provisions of S. 12 and some of the paragraphs of the Employee's Provident Funds Scheme, 1952.

14. Since the petition is by the employers and it is the liability of the employers which is the main question to be considered, I will dispose of the position of the employees in the first instance. The other reason why I am considering the position of the employees in the first instance, and separate the position of the employers is that under the provident fund scheme the Legislature has given certain directions to the employer which he must observe and that section does not deal with the employee. As I have pointed out earlier, the employee is permitted to reduce his own contribution but not below the statutory minimum. On behalf of the respondents, the learned counsel Mr. Jetley,, accepted the position that if the employees apply in proper form prescribed by the scheme which is Form 4A to the 1952 Scheme, the Commissioner for Employees"

Provident Fund will be bound to consider the application on merits and dispose them of accordingly. Unfortunately, till to-day no such application in proper form has been received from any of the employees of the petitioner-company and as and when such applications will be received, authorities will deal with them on merits. That I think settles the question as to what should happen to the contribution of the employees as and when they obtain a proper direction in the matter of reduction under the provisions of a para 29(2) by applying in Form 4A to the appropriate Commissioner.

15. For the purpose of considering now the position of the employer, I will assume that an employee may be allowed to vary his contribution and to reduce it below 12 1/2 per cent. Would that in any manner affect the position of the employer or would that fact be of any assistance to the employer to reduce his responsibility, is the only question to be considered when the provisions of S. 12 are to be interpreted. Section 12 of the Provident Fund Act is in the following words :

"No employer in relation to an establishment to which any Scheme applies shall, by reason only of his liability for the payment of any contribution to the Fund or any charges under this Act or the Scheme, reduce, whether directly or indirectly, the wages of any employee to whom the Scheme applies or the total quantum of benefits in the nature of old age pension, gratuity or provident fund to which the employee is entitled under the terms of his employment, express or implied".

16. The above section properly analysed will show that it contains a direction to an employer of an establishment to which "any scheme applies". It is not only where the statutory scheme applies that the section is attracted, but it is attracted whatever the scheme, as the wording used by the Legislature is "any scheme". Undoubtedly, therefore, a voluntary Provident Fund Scheme would be covered by the said expression.

17. The next important clause in the section is that such employer shall not be allowed to reduce whether directly or indirectly the "wages" or "total quantum of benefits" (which shall be dealt with in detail hereafter) only by reason of the fact of his liability for payment of any contribution to the Fund under the Act. What are the contents of the two topics which cannot be reduced by the employer will be discussed in detail hereafter. But the important provision of the second clause in the section is that simply because the Provident Fund Act creates a statutory liability on the employer to contribute to the Provident Fund or to contribute any charges under the Act or under the scheme, like administrative charges he is not permitted to reduce the wages or total benefits as mentioned in the ultimate operative part of that section. The coming into force of the Provident Fund Act and the Scheme thereunder which creates additional liability towards charges or other payments is not a ground available to an employer like the petitioner for reducing the wages or the total quantum of benefits.

18. The last portion of S. 12 says that there would be no reduction whether

directly or indirectly of the wages any employee to whom the scheme applies. The expression "scheme" here obviously means any scheme as contemplated by the first opening clause of S. 12. If, therefore, any scheme is applicable whether statutory or voluntary the employer is not permitted to reduce the wages either directly or indirectly. The employer is thus prevented from touching the wage content of an employee as was available to the employee the day the Act and the Scheme became applicable. This is one part of the prohibition. The other relates to the other benefits available to the employee.

19. Under this part of the prohibition the employer cannot reduce in any manner the total quantum of benefits in the nature of old age pension, gratuity or provident fund to which the employee was entitled under the terms of his employment express or implied. This clause pre-supposes that whatever benefits were available to the employee either in the nature of the old age pension, gratuity or provident fund on the day when the Act became applicable to his factory they would represent his terms of employment whether express or implied. This benefit is not to be reduced in any manner. It may be that in a certain establishment only provident fund scheme may be in force, but in some others there may be additional schemes like providing gratuity as well as old age pension. Where, therefore, any one benefit is available in an establishment or more than one are already available, the total benefits of either one or more of the schemes must be maintained at the same level at which it was available to the employee when the Act and the Scheme became applicable. In other words, the Legislature has taken care to see that where higher wages are available to some employees or other benefits were already obtained because of the better financial condition of particular establishment, the Act and the Scheme are not supposed to reduce those benefits in any manner whatsoever. The intention is to give minimum benefit to all and to continue the higher benefit to some who are already lucky enough to have it in a certain establishment. It is in that sense that the last Clause uses the expression "total quantum of benefits". Whether there is only one scheme or more, the total benefit either under one scheme or together has got to be continued and cannot be reduced in any manner simply because the Act and the scheme have become available to a particular employee or an establishment.

20. If this is the correct meaning of S. 12, can it be said that simply because the exemption earlier granted under S. 17 read with sub-para (4) of para 27 of the scheme is cancelled, the total benefit which the employee was already getting under the voluntary scheme could be permitted to be reduced simply because the statutory scheme now became applicable? In my view the only effect of cancelling or annulling the exemption is that the statutory scheme now became available in all respects except the old rates of contribution which are more beneficial. They must be continued whether it is the contribution of the employer or the employee. I have already made it clear that the employee can get his contribution reduced by a proper application but so far as the contribution of the employer is concerned, there is a strict fiat contained in S. 12 that the benefit

which the employee was getting shall not be permitted to be reduced. In other words, after the exemption withdrawn and the employees of the establishment fell under the statutory scheme there is a possibility of higher contribution of the employees being reduced if the Commissioner agrees but not below the statutory minimum. However, not only there is no provision for permitting reduction any the employer but there is a strict direction under S. 12 that the employer shall be allowed to do so, If this is the real intent and meaning of S. 12, it is obvious that the petitioner cannot claim to reduce his contribution below 10 per cent which was his former contribution under the voluntary scheme. It would also follow that until a reduction by an appropriate order has been granted by the Commissioner, the employees cannot also contribute less than what they were doing earlier.

21. Since what the Regional Commissioner has pointed out to the petitioner on receipt of a letter from the Central Provident Fund Commissioner is precisely in consonance with the real meaning of S. 12, as I have found above, the petitioners have no ground to complain against that letter and there seems to be no cause of action for the petition.

22. I may incidentally point out that this question did not directly arise before a Division Bench of this Court in the case of *The State Vs. Hathiwala Textile Mills and Others*, , they considered incidentally the provisions of S. 12 of the Employees' Provident Fund Act and expressed a view that the employer does not seem to have any right to reduce his contribution even if the exemption granted earlier was cancelled and the factory or the establishment fell within the provisions of the statutory scheme.

23. In this view of the matter, I find that there is no substance in the petition and the rule must be discharged. However, as the learned counsel for the petitioners states that they have filed the petition as a test Case to find out the real meaning of S. 12, I direct that there would be no order as to costs.