
(1966) 11 MAD CK 0006
In the Madras High Court

Cosmopolitan Club

APPELLANT

Vs

Regional Provident Fund Commissioner

RESPONDENT

Date of Decision : 25-11-1966

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 1, 16, 4
Industrial Disputes Act, 1947 — Section 2

Citation : (1968) ILR (Mad) 441 : (1967) 1 LLJ 797 : (1967) 80 LW 267

Hon'ble Judges : Srinivasan, J

Bench : Single Bench

Judgement

Srinivasan, J.

The petitioner is the Cosmopolitan Club, Madras, The respondent, the Regional Provident Fund Commissioner, Madras, issued a notice, dated 29

July 1963, to the petitioner informing the petitioner that with effect from 1 July 1963, the Employees' Provident Funds Act had been made

applicable to the petitioner-club and called upon the petitioner to submit the necessary return in order to give effect to the provident fund scheme.

The petitioner has come to Court claiming that the club, which is a body corporate registered under the Indian Companies Act, is a social

recreational association formed for the purpose of affording to its members the privileges, advantages and conveniences of a club. It is claimed that

the notification Issued by the Government u/s 1, Sub-section (3)(b), of the Act, which purported to bring within the scope of the Employees'

Provident Funds Act institutions like the petitioner-club, is beyond the ambit of that provision and is ultra vires and illegal, It is principally

contended that the Act is Intended to apply only to commercial organizations and not to non-proprietary associations such as the petitioner-club,

which provides certain amenities and facilities to its own members.

2. On behalf of the respondent, the complaint that the notification is in excess of the provision referred to is resisted.

3. The Employees' Provident Funds Act, 1952, by Section 1, Sub-section (3)(a), makes it applicable (subject to what may be termed the infancy

protection outlined in Section 16 of the Act)

to every establishment which is a factory engaged in any industry specified in Sch. I and in which twenty or more persons are employed.

Schedule I contains a list of industries. Section 4 of the Act empowers the Central Government to add any other industry to Sch. I. We are not,

however, concerned in the present case with an establishment which is a factory, engaged in a specified industry. Sub-section (3)(b) of the Act

makes the Act applicable

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.

There is a proviso to this section which confers a further power upon the Central Government to apply the Act to establishments employing even

less than twenty persons. The plain language of this provision, Sub-section (3) (b) contrasted with Sub-section (3)(a) of Section 1 of the Act,

indicates two broad classifications. One is an establishment which is a factory engaged in any scheduled Industry and the other is "" any other

establishment, which would mean one which may not be of the nature of a factory engaged in any specified industry. The requirement which is

common to both sub-clauses of Sub-section (3) is that the establishment to which the Act applies or is made applicable should employ twenty or

more persons. The power conferred by Sub-section (3)(6) accordingly enables the Government to apply the Act to any establishment, though it is

not a factory and is not engaged in any scheduled industry, but which employs twenty or more persons. The term "" establishment"" is not defined in

the Act and must, to my mind, take its meaning from the context in which it appears, that is to say, the purpose underlying the Act. The Act itself

was made for the purpose of providing for the institution of provident fund for employees in factories and other establishments. The dominant

intention expressed both by the title as well as the contents of the Act would

thus appear to be that it is enacted in the interests of employees in establishments not below a particular size. The question is whether, as contended by the petitioner, the Act cannot be made applicable to institutions like the petitioner-club.

4. The notification issued by the Central Government was made in the exercise of the powers conferred by Section 1, Sub-section (3), Clause (b), and the relevant part reads:

The Central Government hereby specifies the following classes of establishments in which twenty or more persons are employed as the establishments to which the Act shall apply with effect from...namely:

(2) Societies, clubs or associations which provide board or lodging or both, or facilities for amusement, or any other service to any of their members or to any of their guests on payment.

That the petitioner-club conforms to the description contemplated in Clause (2) of the notification is not in dispute. The objection raised is more

fundamental, namely, that the Act was not intended to be made applicable to clubs of this description, that is to say, clubs which are non-

commercial. Sri A. K. Sriraman, learned Counsel for the petitioner, makes a distinction between proprietary and non-proprietary clubs. Where a

person is the owner of a club and provides facilities of the kind mentioned in Clause (2) of the notification, such a person runs the club with a profit

motive and runs it as a commercial venture. On the other hand, where an association is formed of members only and the club, though incorporated

and becoming a legal person as distinct from the members, provides amenities and facilities to its members, it does not do so as a commercial

proposition. While the first class of club may be susceptible of being brought within the scope of the Act, the second class is not, so it is argued.

5. Even at the outset, it may be pointed out, whether it is a proprietary or non proprietary club, so far as the employees of either institution are

concerned, they stand on the same footing, and if the intent of the legislature was to provide some measure of relief to employees, there can in

principle be no distinction between the two kinds of establishments.

6. It is no doubt true that the activities of clubs of this kind, in so far as they provide refreshments and other service at a price to their own

members, have been held not to come within the scope of the business of a dealer for the purpose of the sales tax. It has also been held that they

do not also come within the scope of the Catering Establishments Act. But are these decisions conclusive on the question in the light and for the

purposes of this statute ? It seems to me they are not.

7. As I said earlier, the expression "" establishment"" has not been defined. It is capable of a variety of meanings and where such an expression in

common use is embodied in a statute, that particular aspect of the meaning of that expression which conforms to the underlying object and policy

of the statute should be adopted. Unlike other Acts where either the expression ""establishment"" or other words analogous thereto are used in

conjunction with such expressions as "" in the course of business or trade,"" in this particular Act, the word "" establishment"" is not qualified in any

way. It only means as organization which employs a certain number of persons and nothing more. As I have pointed out, there exists only a broad

classification between an establishment of the nature of a factory engaged in an industry and all other establishments. It is the attempt of Sri

Sriraman, learned Counsel, to induce me to hold that any other establishment occurring in occurring in Sub-section (3), Clause (b), must take its

colour from Clause (a). The question is whether that would be a proper mode of interpretation. In The State of Bombay and Others Vs. The

Hospital Mazdoor Sabha and Others, , the question arose whether hospitals could be brought within the definition of "" Industry,"" and it was argued

that the rule of construction required that when two or more words which are susceptible of analogous meaning are coupled together, they should

be understood to be used in their cognate sense. The argument was that certain essential features are invariably associated with the words

business "" and "" trade "" and the colour of these attributes would also be taken by other words used in the definition, though their normal import

might be wider. This argument was advanced in relation to the definition of the word "" Industry"" occurring in Section 2(j) of the Industrial Disputes

Act. But their lordships point out that this rule of construction cannot prevail where it is clear that words of wider connotation have been

deliberately used in the definition in order to make the scope of the definition correspondingly wider and that this rule cannot be applied when the

subject of the legislation is wholly free from ambiguity. In *Mohmedalli and Others Vs. Union of India (UOI) and Another*, a notification issued u/s

1(3)(b) of the Act bringing within the scope of the Act hotels and restaurants was attacked. Their lordships repelled the contention that the power

conferred upon the Government is uncontrolled and uncanalized. They proceeded to point out that the underlying idea behind the provisions of the

Act is to bring all kinds of employees within its fold as and when the Central Government might think fit, after reviewing the circumstances of each

class of establishments. The wide scope of the Act and the intention underlying this social piece of legislation were briefly referred to in meeting that

argument,

8. I am not convinced of the soundness of the argument of the learned Counsel that, having regard to the previous history of this enactment and the

changes it has undergone, it was always the intention of the legislature only to apply it to establishments in the nature of business undertakings.

From the point of view of persons who were to be benefited by this piece of legislation, I am unable to agree with the learned Counsel that the

operation of the Act could be limited in that manner. I accordingly hold that the notification is not beyond the power conferred by Section 1(3)(b)

of the Act.

9. The petition fails and is dismissed, but there will be no order as to costs.