

(1973) 04 MAD CK 0004
In the Madras High Court

Cosmopolitan Club

APPELLANT

Vs

Regional Provident Fund Commissioner

RESPONDENT

Date of Decision : 09-04-1973

Acts Referred:

Citation : (1974) ILR (Mad) 226 : (1978) 87 LW 13 : (1974) 1 MLJ 83

Hon'ble Judges : Venkataraman, J

Bench : Division Bench

Judgement

Venkataraman, J.—This is an appeal directed against the judgment of Srinivasan" J. dismissing the petition filed by the Cosmopolitan Club,

Madras for a writ of mandamus prohibiting the Regional Provident Fund Commissioner, Madras taking action under the Employees" Provident

Funds Act, 1952 as amended against the Cosmopolitan Club, Madras. Briefly speaking, the Act is intended to provide for the institution of

provident funds for employees in factories and other establishments; the employer has to contribute 61/4%. The Cosmopolitan Club contends that

the Act does not apply to them.

2. Originally Section 1 (3) of the Act stood as follows:

Subject to the provisions contained in Section 16 (dealing with infant factories) it applies in the first instance to all factories engaged in any industry

specified in Schedule in which fifty or more persons are employed, but the Central Government may, after giving not less than two months" notice

of its intention so to do, by notification in the Official Gazette, apply the provisions of this Act to all factories employing such number of persons

less than fifty as may be specified in the notification and engaged in any such industry.

This was amended by Act XCIV of 1958 so as to read as follows:

Subject to the provisions contained in Section 16, it applies--

(a) to every establishment which is a factory engaged in any industry specified in Schedule I and in which fifty or more persons are employed, and

(b) to any other establishment employing fifty or more persons or class of such establishments which the Central Government may by notification in

the Official Gazette, specify in this behalf:

Provided that the Central Government may, after giving not less than two months' notice of its intention so to do, by notification in the Official

Gazette, apply the provisions of this Act to any establishment employing such number of persons less than fifty as may be specified in the

notification.

3. This was further amended by Act No. XLVI of 1960 substituting the word "twenty" for the word "fifty".

4. Under the powers vested in the Central Government by Section 1 (3) (b) they issued the following notification on 31st May, 1963 viz.,

The Central Government hereby specifies the following classes of establishments in which 20 or more persons are employed as the establishments

to which the Act shall apply with effect from, namely;

Societies, clubs or associations which provide board or lodging or both, or facilities for amusements or any other service to any of their members

or to any of their guests on payment.

The Cosmopolitan Club, Madras, had in its employment more than 20 persons. Acting under this notification the Regional Provident Fund

Commissioner, Madras issued a notice to the Cosmopolitan Club, Madras to submit a statement under the Act. Thereupon, the Cosmopolitan

Club filed the writ petition contending that though more than 20 persons are employed in the Cosmopolitan Club it does not make profit, that it

exists only for the purpose of providing amenities and facilities for the members thereof, that it is not a commercial establishment and that

consequently it cannot be said to be an "establishment" within the meaning of Section 1 (3) of the Act even after the amendment. It is contended

that the notification is ultra vires the Act. This contention was repelled by Srinivasan, J. and hence this appeal.

5. Srinivasan, J., relies on two decisions of the Supreme Court one of which directly concludes the point i.e., the decision in *Mohmedalli and*

Others Vs. Union of India (UOI) and Another, . There a similar notification extending the Act to (1) hotels and (2) restaurants was attacked on the

ground that it was ultra vires. The contentions will appear from the following passage:

It has been contended (1): that Section 1 (3) (b) under which the notification including restaurants and hotels were brought under the operation of

the Act, is invalid because it confers uncontrolled and uncanalised power on the Government; (2) that the Act was intended to apply to mere

wage-earners and not to salaried people and that, therefore, the two notifications as a result of which the petitioners' employees have been brought

within the purview of the Act are bad inasmuch as they are salaried employees and not mere wage-earners; and (3) that the scheme is bad under

Article 14 of the Constitution because it is discriminatory.

Their Lordships of the Supreme Court rejected these contentions. We are mainly concerned with the observations regarding contentions (1) and

(3). Regarding contention (1), their Lordships of the Supreme Court observed as follows:

In our opinion, there is no substance in any one of these contentions. It cannot be asserted that the powers entrusted to the Central Government to

bring within the purview of the Act such establishments or class of establishments as the Government may by notification in the Official Gazette

specify is uncontrolled and uncanalised. The whole Act is directed to institute provident funds for the benefit of employees in factories and other

establishments, as the preamble indicates. The institution of provident fund for employees is too well established to admit of any doubt as to its

utility as a measure of social justice. 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. Schedule I to the Act contains a list

of a large variety of industries engaged in the manufacture of diverse commodities, mentioned therein. To all establishments which are factories

engaged in the industries enumerated in Schedule I, the Act has been made applicable of its own force, subject to the provisions of Section 16,

which has indicated the establishments to which the Act shall not apply. The schedule is liable to be added to or modified so as to include other categories of industries not already included in Schedule I. So far as establishments which do not come within the description of factories engaged in industries, the Central Government has been vested with the power of specifying such establishments or class of the establishments, as it might determine, to be brought within the purview of the Act. The Act has given sufficient indication of the policy underlying its provisions, namely that it shall apply to all factories engaged in any kind of industry and to all other establishments employing 20 or more persons. This Court has repeatedly laid it down that where the discretion to apply the provisions of a particular statute is left with Government, it will be presumed that the discretion so vested in such a high authority will not be abused. The Government is in a position to have all the relevant and necessary information in relation to each kind of establishment enabling it to determine which of such establishments can bear the additional burden of making contribution by way of provident fund for the benefit of its employees. The power to exempt given to the appropriate Government u/s 17 is not uncanalised because Clauses (a) and (b) of that section postulate that the exemption would be granted on the ground that the employees of those establishments are already in the enjoyment of benefits in the nature of provident fund, pension or gratuity not less favourable to them than under the Act.

Regarding contention (3) their Lordships of the Supreme Court observed as follows:

It now remains to consider the third and the last contention raised on behalf of the petitioners, namely that the Act suffers from the vice of discrimination and therefore infringes Article 14 of the Constitution. It is even more difficult to understand this contention, because as already pointed out, the Act applies to all establishments except those recited in Section 16 which before its amendment by Act XLVI of 1960, exempted establishments belonging to Government or to a local authority. But whatever vice there may have been in that provision has been removed by amending the section....

6. No doubt, the question before the Supreme Court was only the vires of the notification. But in determining that question their Lordships had to

interpret the Act, and while interpreting it they have, pointed out that there are two categories of establishments to which the Act will apply. Firstly,

it will apply to a factory engaged in any industry specified in Schedule I and in which 20 or more persons are employed and the Central

Government could add other industries, in Schedule I; a factory has also been defined in the Act. To a factory engaged in any industry specified in

Schedule I, the Act will automatically apply. We are not concerned with that. Secondly, on the terms of Section 1 (3) (b) the Act will apply to any

other establishment or class of such establishment employing 20 or more persons which the Central Government may specify. The word "any" is

general and their Lordships point out that the Act has given sufficient indication of the policy underlying its provisions, namely, that it will apply to all

factories engaged in any kind of industry and to all other establishments employing 20 or more persons. They point out that the only limitation is

that the establishment should employ 20 or more persons and that the Central Government can be expected to have all the relevant information

enabling it to determine which of such establishments can bear the additional burden of making contribution by way of provident fund for the

benefit of its employees. In pointing out that the Act is not discriminatory their Lordships say that the Act applies to all establishments except those

recited in Section 16. There is nothing in the Act to show that the wide scope of the words "any other establishment" should be limited to a

commercial establishment as contended for by the appellant. The interpretation of their Lordships also shows that there is no scope for importing

such a consideration in interpreting the words "any other establishment". After this interpretation by the highest Court, it is not possible to accede

to the contention that the words "any other establishment" should be so limited to "commercial establishments".

7. The learned Counsel for the appellant however relies on the Statement of Objects and Reasons of the amending Act XCIV of 1956 in support

of this contention. They are:

The Employees' Provident Funds Act, 1952, applied originally to factories engaged in the six industries specified in Schedule I, namely, cement,

cigarettes, electrical, mechanical or general engineering products, iron and steel, paper and textiles. Section 4 of the Act, provides for the extension

of the Act to other factories by a notification in the Official Gazette. Of late, there has been a persistent demand for the extension of provident fund

benefits to all industrial workers and the Act has recently been extended to seventeen additional factory industries by notification. Section 4,

however, provides for application of the Act to factory industries only. There is no provision in the Act enabling its extension to other

establishments like plantations, mines, commercial establishments etc. It is, therefore, proposed to include an enabling provision in the Act to the

effect that, subject to the exemptions provided in Section 16, the Act shall apply to any establishment or class of establishments as may be

specified by the Central Government by notification in the Official Gazette.

He relies in particular on the following sentence.

There is no provision in the Act enabling its extension to other establishments like plantations, mines, commercial establishments, etc." He urges that

these words show that when the amending Act was introduced, the Government had only "commercial establishments" in mind. We do not think

that this sentence in the Statement of "Objects and Reasons" can in any way curtail the wide scope of the words "any other establishment"

particularly when according to the interpretation placed by the Supreme Court, no such limitation can be imported.

8. There is a decision of the Calcutta High Court in M.G. Poddar v. Regional Provident Fund Commissioner (1971) L.L.J. 381. taking the same

view which Srinivasan, J., has taken and we are also taking.

Srinivasan, J., has referred to another decision in The State of Bombay and Others Vs. The Hospital Mazdoor Sabha and Others, . wherein their

Lordships held that the concerned hospital was an industry within the meaning of the Industrial Disputes Act. There has been a change of opinion in

the Supreme Court on that point in the later decision in The Management of Safdarjung Hospital, New Delhi Vs. Kuldip Singh Sethi, . But the

definition of "industry" in the Industrial Disputes Act is entirely different viz., "industry" means business, trade, undertaking, manufacture or calling

of employers and includes any calling service, employment, handicraft, or industrial occupation or avocation of workmen. The word "industry" has

been defined with reference to so many words, whereas here "any other establishment" are very general and are not curtailed by any limiting

words. No purpose will be served by examining the matter further, particularly in view of the decision of the Supreme Court in *Mohmedalli and*

Others Vs. Union of India (UOI) and Another, . which in our opinion concludes the matter.

9. The appeal is accordingly dismissed but there will be no order as to costs.

10. The learned Counsel for the appellant prays that he may be given an opportunity to put forth his representation u/s 7 (1). The stage for

determining the amount due has not yet arrived as contemplated u/s 7 (a). It will have to be preceded by an enquiry and no order determining the

amount due from any employer shall be made under Sub-section (1) unless the employer is given a reasonable opportunity to represent his case.

We have no doubt that such an opportunity will be given.