

(1962) 08 KL CK 0019

In the High Court Of Kerala

Case No : O.P. No's. 297, 783, 791, 817 and 881 of 1961

Dhanalakshmi Weaving Works, Kakkat, Cannanore and Others	APPELLANT
Vs	
The Regional Provident Fund Commissioner, Trivandrum	RESPONDENT

Date of Decision : 20-08-1962

Acts Referred:

Constitution of India, 1950 — Article 226
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14,
14(2A), 14B, 19, 19A

Citation : AIR 1963 Ker 219 : (1964) 1 LLJ 528

Hon'ble Judges : C.A. Vaidialingam, J

Bench : Single Bench

Advocate : M.I. Joseph, in O.P. Nos. 297/61, 783/61, 817/61 and 881/61; K. Balakrishna Panicker, in O.P. No. 297/61; V.K.K. Menon, in O.P. No. 783/61; P.M. Mathew, in O.P. No. 817/61 and V. Bhaskaran Nambiar, in O.P. No. 791/61, for the Appellant; Govt. Pleader, for the Respondent

Judgement

C.A. Vaidialingam, J.—In all these writ petitions, though the petitioners are different, they challenge the proceedings taken by the Regional Provident Fund Commissioner, Trivandrum, under the Employees' Provident Funds Act, 1952, Central Act 19 of 1952, by way of demanding contributions, or threatening to claim damages for default in making contributions or threatening prosecution for non-payment of the contribution.

2. in O. P. Nos. 297, 783, 817 and 881 of 1961, the managements are represented by Mr. M. I. Joseph, learned counsel, and the management-petitioner in O. P. No. 791 of 1961 is represented by its learned counsel, Mr. Bhaskaran Nambiar. All these managements are textile industries; and there is no controversy that textile industry has been included in the schedule to the Employees' Provident Funds Act by Notification issued by the Central Government.

3. Evidently, in view of this, proceedings have been initiated by the respondent

calling upon the various managements to furnish returns regarding the number of employees engaged by them and also calling upon them to make contributions on the basis that the Act will apply to the establishments, in question.

4. This claim, by the Regional Provident Fund Commissioner, as against these various managements was sought to be resisted by them on the ground that the Act does not apply to the establishments in question because in none of those establishments 20 or more persons are employed. That is, according to the management, unless the conditions prescribed in Sub-section (3) of Section 1, namely, (a) the establishment being a factory, (b) the factory being engaged in the industry in schedule I and (c) 20 or more persons are employed, the Act is not applicable at all. Notwithstanding the fact that such a question has been raised even when the proceedings were initiated by the appropriate authority, that question has not been considered and a decision arrived at regarding these essential facts.

5. Before I consider the various matters that have been dealt with in the affidavits filed in support of these writ petitions, as well as the stand taken by the Regional provident Fund Commissioner in these proceedings, I may state at the outset that though the petitioners challenged the Act itself, as also, in particular some of the provisions of the statute as invalid and ultra vires, during the course of arguments, none of the learned counsel have argued any of these points. The entire argument ultimately centred round this, namely, as to when there is a doubt on the question as to whether the factory in question is one where 20 or more persons are employed and when a decision on that aspect has not been rendered as is obligatory, according to the management, by the Central Government u/s 19-A of the Act, whether there is jurisdiction in the authority concerned to enforce the provisions of the statute.

6. in these original petitions, the Inspector of Provident Fund has filed counter-affidavits only in O. P. No. 297 of 1961 and O. P. No. 791 of 1961. In particular, in O. P. No. 783 of 1961, there is a counter-affidavit filed by the Labour Union also repudiating the stand taken by the management. Learned counsel appearing for the managements and the Labour Union and the learned Government pleader are agreed that the counter-affidavit filed on behalf of the Regional Provident Fund Commissioner in O. P. No. 297 of 1961, as well as O. P. No. 7S1 of 1961, can be treated as the counter-affidavit in respect of the other writ petitions also.

7. There is also a further contention that has been raised by the learned counsel appearing for the managements in these matters, namely, that the facts, as alleged by the management will establish that there is no employer employee relationship in these factories. On the other hand, learned Government pleader has rather strenuously urged that everyone of the circumstances relied upon and stated in the counter-affidavit filed on behalf of the Regional Provident Fund Commissioner, will clearly establish that there is an employment of 20 or more persons in each of these factories and that, therefore, the provisions of the Act will apply.

8. I will have to consider as to whether, on the materials on record, and in view of the controversy, which I will also indicate later, that exists between the parties concerned regarding the nature of employment and other Incidental matters, an adjudication can be made in these proceedings one way or the other, as a point of law, as to whether the relationship of employer and employee exists in the circumstances of this case.

9. Before I advert to that aspect, the larger and more serious aspect that has been raised before me by the learned counsel for these petitioners is that the question of deciding about the number of persons who are employed in the factory is essentially a matter provided u/s 19-A of the Employees' Provident Funds Act, which has also further provided that a decision on this matter will have to be given by the Central Government whose decision will be final. Therefore, unless a decision has been so rendered by the Central Government on this question, there is no jurisdiction in the Regional Provident Fund Commissioner to enforce the provisions of the Act, by himself assuming that the Act applies to the establishments in question.

10. I will refer to the averments contained in the affidavit filed in O. P. No. 297 of 1961, as well as the counteraffidavit filed by the respondent in the said O. P. because that will indicate, according to me, the nature of the employment, according to the management, and what is the nature of the employment, according to the Department. I will have to advert to the affidavit filed in O. P. No. 791 of 1961 as well as the correspondence that passed between the parties therein, because that will give an idea as to whether there has been a proper approach made by the authority concerned in investigating the question is to whether there is an employee-employer relationship, before the provisions of the Act are sought to be enforced.

11. in O. P. No. 297 of 1961, the petitioner in particular states that the workers, except the staff members, form a type of casual workers and these workers, when they have time and feel inclined to do so, go to the factory at whatever hour they like, when the work is in progress and will be supplied with yarn or warps according to their choice, if the managements like, and work on the looms. it is also further stated that the yarn or warp they weave into cloth, viz., towels, shirtings, coatings, etc. for which they will be paid according to quality and measurement. it is also the case of the management that the payment is made, not as wages for the work done for any particular time, but only according to stipulated rates for the particular fabrics, that are woven and turned cut by each individual weaver. The management avers that the persons so employed are not bound to go and work regularly, or daily, or even for stated hours, or for a fixed number of hours and are not bound to work at any particular speed, and they work fast or go slow, or leave the premises without taking permission. It is also further averred that there is no supervision over their work; but there is general supervision only to see that the yarn or warp supplied to them are utilised for making the cloth for the establishment and not stolen or taken away.

12. Then the management states that the staff in the petitioner's establishment consists only of clerks and a maistry. All others are irregular type of workers, over whom the petitioner has absolutely no control in their work, or in the manner of work or over the time they take for finishing the work. The management further avers that except the staff members the other persons working are not persons coming within the definition of word "Employee" and within the meaning of the words "persons are employed" used in Section 1 (3) of the Act. The management states that the number of staff members, as such, who are employed in the establishment comes below ten. The management also avers that the Regional Provident Fund Commissioner, who is the respondent, has no power to decide the question as to whether a particular type of worker is an "Employee", inasmuch as the Jurisdiction for that purposes vests only in the Central Government u/s 19-A.

13. There are certain other matters regarding the incapacity of the industry to pay and attacking the constitutionality of the Act and also the validity of certain sections. As I mentioned earlier, it is not really necessary to deal with these aspects because none of these contentions have been argued before me.

14. Before I advert to the counter-affidavit, filed by the Inspector, in this writ petition, I will refer to the correspondence that passed between the petitioner and the respondent.

15. Under Ex. P-1, dated 26th December 1950, a notice is issued to the petitioner. After referring to the notification issued by the Government of India applying the provisions of the Act, and the Scheme to establishments employing 20 or more persons with effect from 31st December 1960, there is a statement to the effect that the petitioner's factory will come under the purview of the Act. A request is also made to the petitioner to furnish, within the time mentioned therein, in the form enclosed, the particulars mentioned therein.

16. The petitioner in this writ petition, no doubt, sent a statement, Ex. P-2, wherein he has given a monthwise employment statement and other particulars. After receipt of this communication, under Ex. P3 dated 30-1-1961, the respondent issues the final notice regarding the applicability of the Act and the scheme to this establishment. There is a categorical statement in Ex. P-3 to the effect that the establishment has completed five years from the date of commencement of production on 21-12-1960. Then it is stated that it employs 20 or more persons. There are various other matters regarding the submission of the return and other allied matters in pursuance of the application of the Provident Fund Scheme.

17. The management in this case prays to quash the proceedings which has resulted in Ex. P-3 and asks for the issue of a writ of prohibition restraining the respondent from taking any further action on the basis of these notices.

18. In the counter-affidavit filed in this writ petition, which is sworn to by the Provident Fund Inspector it is stated that the said Provident Fund Inspector has

inspected similar establishments carrying on the manufacture of hand-loom cloth in Cannanore District. The deponent further states that the petitioner's industry is one of the industries to which the Act has been made applicable. Then there is an averment to the effect that the Inspector has made enquiries in the office of the Inspector of Factories, Cannanore, and that he has been informed that the manager of the petitioner's factory has submitted returns in Form No. 11 prescribed under Rule 106 of the Kerala Factories Rules, 1957, and that the petitioner's factory has an employment strength of 41 persons as on 1-12-1960. From this, the Inspector further states, that the Employees' Provident Funds Act and also the Scheme apply to the petitioner's factory with effect from 31-12-1960.

19. The Inspector further refers to a letter written by the respondent on 26-12-1960, Ex. P-1, as well as to the reply received from the petitioner regarding the employment strength in this establishment.

20. it is further averred that the petitioner has not properly and correctly described the nature of the work carried on in the factory. It is also stated that the petitioner has not correctly stated the real relationship between himself and the workers employed in his establishment. After this statement, the Inspector avers that he has made enquiries in the office of the Inspector of Factories, Cannanore, and has been informed that the petitioner's factory is an establishment registered under the Factories Act. Pausing here for a moment, from the various averments made in the counter-affidavit filed by the Inspector concerned, to which I have already adverted, it follows that the Inspector, in question, has not visited the factory of this petitioner or for the matter of that, any of the petitioners and the sole source of Information, for attempting to controvert the statements made in the affidavits filed by the managements, is the enquiry that he says he made in the office of the Inspector of Factories. This is an aspect which will have to be considered in the attack that is made by learned counsel appearing for the managements, as to whether the claim made by them regarding non-applicability of the Act, has been at any time properly appreciated or considered by the authorities concerned before they began to enforce the provisions of the statute.

21. The Inspector further states that he has again been informed that the petitioner's factory is an establishment registered under the Factories Act and that he is further informed that the names of the workers employed as weavers are contained in the Muster Roll. The Inspector gives the time of work of the factory in paragraph 7. The Inspector again says that the petitioner's establishment works eight hours a day with an interval of 1 1/2 hours. He makes a statement that the persons employed as weavers by the petitioner are permanent employees and they are not employed on casual basis.

22. There is a significant statement in paragraph 7 of this counter-affidavit by the Inspector to the effect that it is true that wages are paid to them on a piece rate basis and that these employees are sometimes permitted to leave the

establishment before the stipulated time, provided they finish their allotted quota of work. Nevertheless he says these employees have regular working hours and they are bound to report for duty during these periods. The Inspector further says that the employees themselves have to weave the cloth and attend to the work for which they are engaged.

23. in paragraph 8 of the counter-affidavit the Inspector refers to a statement made by the management that

"these workers when they have time and feel inclined to do so, go to the factory at whatever hour they like, when the work is in progress and will be supplied with yarn and warps according to their choice if the management likes, and work on the looms".

So far as this statement is concerned, the Inspector states that they are entirely Incorrect. He again challenges a further statement made by the management that "the persons are not bound to go regularly, or daily, or at stated hours, or for a fixed number of hours" and he also states that this statement is not correct and he categorically makes a further statement that the workers are supervised by the management and they are employed like any other regular workers in a factory. On this basis, the Inspector finally submits that the power of direction and control of the workers rests with the management of the petitioner's establishment and therefore these workers are employees within the meaning of the word "employee" as defined in the Employees' Provident Funds Act, 1952.

24. The various matters regarding the incapacity of the industry to pay and the attack made regarding the constitutionality of the Act and certain provisions of the Act are also dealt with by the Inspector.

25. it will be seen from the statements made in the counter-affidavit by the Inspector concerned, that the Inspector attempts to challenge or controvert the statement of the management and also draws his own conclusions as to what is the nature of the relationship between the workmen and the managements, in question, not on the basis of any information gathered by him from a personal inspection during working time of this establishment. But all these averments assertions, and attempts at contradiction are really made on the basis of what, even according to himself, is a result of information obtained from the office of the Inspector of Factories.

26. No doubt, even on these averments made in the manner mentioned above, without any personal investigation, the learned Government Pleader has rather earnestly requested this court to hold that these averments and statements clearly show that there is a relationship of employer and employee existing in this establishment.

27. in all the other writ petitions also, it will be seen that there has been the usual notice issued to the managements concerned that the particular industry is attracted by the provisions of the Act and calling upon the managements to file

returns regarding the number of persons employed and other particulars.

28. it will be seen in O. P. 783 of 1961, when such a notice was received by the management dated 26-12-1960 and was followed by a further notice dated 25-1-1961 calling upon the party concerned to make contributions and other matters, the petitioners by their communication dated 17th February 1961, after acknowledging the notice received from the Regional Provident Fund Commissioner referred to above, categorically take up the position that they are engaging two types of workers, namely, a permanent staff which consists of the clerks and malstry, that the other group consists of persons who are irregular type of workers over whom they have no control in the manner of tbeir work, method of work, and there is no master and servant relationship and they are not persons employed and they will not come within the definition of "employees" as they are not "persons employed" as that expression is used in the Act.

There is a further request made in this communication dated 17-2-1961 that before applying the law, the authority has to ascertain whether the management employs 20 or more persons as is mandatory under the Act. They also refer to the employment of clerks and maistries who are members of the staff. Ultimately, the management winds up with a request to the authority concerned not to enforce the provisions of the statute. But it will be seen that this request is met by a peremptory demand by the respondent informing the petitioners that if they do not remit the Provident Fund contributions in full, together with administrative charges and furnish intimation thereof to the office of the respondent, within the period mentioned therein, the petitioners will be liable to pay damages on delayed payments at the enhanced rate of 25 per cent of the arrears provided u/s 14B of the Act. There is also a threat contained in this communication dated 15-4-1961 that the dues will be recovered as arrears of land revenue. These proceedings are challenged by the petitioner in these proceedings.

29. Before I pass on to the next writ petition and the correspondence that passed between the parties, I may also refer to the counter-affidavit filed on behalf of the Labour Union, in O. P. No. 783 of 1961. In this counter-affidavit it is stated that he has been permitted to intervene in these proceedings and he controverts the stand taken by the management in all these proceedings; and according to this counter-affidavit, there is a relationship of employee and employer between the management and their employees. He also refers to some awards of the Industrial Tribunals of Medras and Kerala State adjudicating various disputes between the management and the workmen in this handloom industry.

The Secretary also refers to the fact that the factories are registered under the Factories Act and therefore the contention of the management that there is no question of employer-employee relationship cannot certainly be accepted. He refers to the existence of Muster Rolls. There are attendance cards according to the Factories Act to the employees. The materials for manufacturing goods are

given by the management. There is fixed period of work during which the employees are to work. The employees themselves are to work and they do not employ anybody else to do the work. It is also averred that there is effective supervision and control by the management. Again, the Secretary of the Union traverses the various other allegations made by the management regarding the capacity of the industry and other matters.

30. Therefore, it will be seen that, according to the Secretary of the Union, there is a relationship of employer and employee and in view of the fact that the establishments in question are registered under the Factories Act and in view of the other circumstances indicated in paragraph 2 of the counter-affidavit there is relationship of employer and employee and therefore the provisions of the Employees' Provident Funds Act are applicable to the establishments.

31. in O. P. No. 817 of 1961, again, the proceedings are initiated by a notice dated 26-12-1960 by the respondent stating that it is understood that the petitioner's factory will come within the purview of the Act and Scheme and requesting the management to furnish information in the form enclosed therewith.

32. This is followed by a further communication dated 27-2-1961 applying the provisions of the Act and stating, in particular, that the management is employing 20 or more persons on 31-12-1960. There are various other matters regarding the payment of contribution also.

33. This demand is promptly met by this management by its communication dated 7-3-1961. They acknowledge receipt of the communication dated 27-2-1961 from the Regional Provident Fund Commissioner, making the provisions of the Act applicable to this establishment. The management further states that when the original notice dated 26-12-1960 was received, they had already sent by registered post a reply on 13-2-1961 controverting the stand taken by the respondent; but they express surprise that in the further communication applying the provisions of the Act received from the respondent, no reference at all has been made to the stand taken by the management in their letter dated 13-2-1961. They emphasise the fact that there is a dispute regarding the number of persons employed by this management and they also state when there is such a dispute or difficulty in applying the provisions of the Act and the Scheme, there is a duty on the part of the officer to decide that dispute. In this connection, they refer to the provisions of Section 19-A and ultimately they state that they will be justified, if they consider that the respondent has suppressed their letter dated 13-2-1961, in his frantic attempt to apply the provisions of the Act at all cost.

34. I am only referring to this aspect in this communication dated 7-3-1961 to show that though the petitioners, rightly or wrongly, have taken up the position that the respondent has no jurisdiction to apply the provisions of the Act, without Investigating the correctness or otherwise of the stand taken by them there is

absolutely no attempt made by the respondent to come into close grips with this aspect.

35. Ultimately, they wind up this letter dated 7-3-1961, by informing the authority concerned that inasmuch as there is a dispute about the applicability of the Act, the respondent will refrain from taking any proceedings under the Act before the decision on the points raised by them is taken.

36. This request made by the petitioners on 7-3-1961, is again met by the communication dated 22-4-1961 by the respondent informing them that they have not yet remitted the provident fund contributions and administrative charges for the period mentioned therein as required under the Act and the scheme, and that they have not also submitted the returns. The petitioners are further warned that if they do not remit the provident fund contributions in full together with administrative charges and furnish intimation thereof to the office of the respondent, within the time mentioned therein, the rate of damages on the delayed payments is liable to be enhanced to 25 per cent of the arrears as provided for u/s 14B of the Act, and that all these amounts will be recovered as arrears of land revenue. The correspondence here again will clearly show that there has been no attempt, much less a serious attempt, made by the authority concerned to consider, whether the stand taken by the management concerned is correct or not.

37. it is these proceedings initiated by the respondent that are challenged in this writ petition.

38. Again in O. P. No. 881 of 1961, the proceedings start by the issue of a communication dated 26-12-1960 of the same pattern as in the other writ petitions. That again is followed up by a communication dated 2-2-1961 making the provisions of the Act applicable on the very ground that it employs 20 or more persons.

39. in acknowledging this letter, the management sent a reply on 14-2-1961 wherein they state that they are engaging two types of workers, namely, a permanent staff which consists of clerks and the maistry and the other group consisting of persons who are irregular type of workers over whom they have absolutely no control. The management also states that there is no master and servant relationship and the persons employed will not come within the definition of "employees" as that expression is defined under the Act. There is a further averment to the effect that before applying the provisions of the statute to the establishment in question, there is a duty on the part of the respondent to ascertain whether the petitioners employ 20 or more persons as is mandatory under the Act. Here again, they wind up with a request to the respondent not to enforce the provisions of the statute till a proper investigation is made in these matters.

40. But this again is met by the respondent by a demand dated 7-4-1961 informing the petitioners that the Act applies and calling upon them to make the

necessary contributions. These proceedings are again challenged in this writ petition.

41. in O. P. No. 791 of 1961 the proceedings are initiated by making the Act applicable by the communication of the respondent dated 27-2-1961. There is a clear averment to the effect that the petitioners employ 20 or more persons on 31-12-1960. On receipt of this communication, the management controverts the stand, taken by the Department regarding the application of the Act and they also say that there is no employer-employee relationship in the case of the management and the persons who work in this establishment. They also say that there they employ two classes of workers, viz., permanent staff which consist of the dyers, warpers, and maistry and the other group consisting of weavers and reelers who are irregular type of workers over whom they have no control in the manner of their work, method of work and there is no rule that they have to be present in the factory at a particular time. The management further says that there is no master and servant relationship and the workers are not persons employed and they will not come within the definition of "employees" and they are not persons employed under the Act. They ultimately wind up with a request to the respondent not to enforce the provisions of the Act.

42. The reply to this communication of the management sent by the Regional Provident Fund Commissioner is somewhat curious. In his reply dated 6-4-1961 the Regional Provident Fund Commissioner states that the contention of the management that the workers in the factory are irregular type of workers over whom the management has no control cannot be accepted. He also adverts to the stand taken by the management that there is no master and servant relationship and there is no relationship of employer and employee and then says :

"There can be no denying the fact that the persons categorised by you as irregular type of workers are employed by you for wages in or in connection with the work of the establishment."

Pausing here for a minute, when the whole controversy that is raised by the management is that the persons employed by him are irregular type of workers who do work as they please and there is no relationship of employer and employee, the authority, instead of considering this aspect, proceeds on the basis that the irregular type of workers in the petitioner's factory are employees of the establishment, which is the very question that the authority had to consider; but he has assumed that there is no controversy.

43. In the later part of the communication, the respondent again says that it does not stand to reason that a person will engage a worker and pay his wages for doing whatever the employee wants of his own choice; and that it may be a fact that the petitioner may have no control over the workers in regard to the attendance for any particular period for work in the factory; but the authority says that this circumstance will not affect his position as one of his employees for

purposes of the Employees' Provident funds Act. Then there is a further requirement calling upon the petitioner to make the contribution.

44. The stand taken by the Regional Provident Fund Commissioner in this communication dated 6-4-1961 clearly shows that, far from considering the controversy that has been raised very seriously by the management concerned, and instead of giving his due attention and consideration to the fact, he had proceeded on the basis that no controversy exists and has merely overruled the objections of the management by ultimately saying that a person will not engage a workman and pay him wages if that employee works as he likes.

45. I am again referring to this only to emphasise the manner of approach made by the respondent.

46. In this writ petition, there is a separate, counter affidavit filed by the Inspector of Provident Fund and the stand taken in this counter-affidavit is more or less substantially the same as that in the counter-affidavit filed in O. P. No. 297 of 1951. Here again, the source of information is traced not to any personal inspection made by the inspector concerned but really to the enquiries that he claims to have made in the office of the Inspector of Factories, Cannanore. Here again, he refers to the fact that the petitioner's establishment has been registered as a factory and he also controverts the stand taken by the management regarding the non-existence of the relationship of employer and employee. Therefore, it is not really necessary for me to advert to this counter-affidavit in any great detail because it is of the same pattern as the previous counter-affidavit.

47. The various matters mentioned above will clearly show that the management was taking up the position consistently and right through, when a demand for contribution was made, under the provisions of the statute, that there is no relationship of employer and employee existing between the management and the workmen and at no time is there an employment of 20 persons or more.

48. This may assume some importance because, as I will indicate presently, when I refer to some of the material provisions of the Act that before the Act can be applied three essential requirements will have to be satisfied, namely, (a) the establishment must be a factory, (b) that the said factory must be engaged in an industry included in Schedule I, and (c) 20 or more persons are employed in the factory. It may be that in view of the definition of the expression "Factory" occurring in Section 2 (g) of this Statute the establishment may be considered to be 3 factory. It may also be that the second requirement, namely, that the factory must be engaged in an industry included in Schedule I, is also satisfied in this case, because there is no controversy that the textile industry has been included in Schedule I and the petitioners are handloom establishments. Therefore, two of the requirements for the application of the Act, as required by Section 1 (3) can be said to be satisfied. But the controversy that rages between the department and the management is as to whether the third essential

requisite, namely, whether there is or is not an employment of 20 or more persons, is satisfied. From the various matters mentioned above, according to the management, there is no relationship of employer and employee between the management and the persons employed in this factory, 20 and more persons are not employed.

On the other hand, the Inspector who has sworn to the counter-affidavit in these matters mainly relies upon some information gathered by him from the office of the Inspector of Factories to the effect that the managements have been registered under the Factories Act. According to his information the averments made by the management cannot be accepted as correct. On the other hand he gives, what according to him, must be the nature of the relationship that exists between the workmen and the employer.

49. This is a convenient stage to refer to some of the material provisions of the Act because these provisions will have, in my view, a considerable bearing in adjudicating upon the scope of Section 19-A.

50. Section 1 (3), Clauses (a) and (b) which are material for the present purpose are as follows:

"1 (3) 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 twenty 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:

Provided that 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 twenty as may be specified in the notification."

In this case there is no controversy that the establishments in each of these cases are sought to be brought in u/s 1(3) (a), namely, an establishment which is a factory engaged in an industry specified in Schedule I and in which twenty or more persons are employed.

51. Section 2 defines the various expressions. Section (2) (a) defines the expression "appropriate Government", Section 2 (b) defines the expression "basic wages" and Section 2 (e) defines "Employer", Section 2 (f) defines the expression "employee" that may have some bearing in the discussion that is to follow immediately.

52. Section 2 (f) defines the expression "employee" as meaning "any person who is employed, for wages of any kind of work, manual or otherwise, in or in connection with the work of an establishment and who gets his wages directly or indirectly from the employer, and includes any person employed by or through a

contractor in or in connection with the work of the establishment."

it will be seen that in order to come within the scope of this definition a person must be employed for wages in any kind of work, mansal or otherwise, in or in connection with the work of an establishment etc.

53. The other part of this definition is not really necessary. But the point to be considered is that before a person can be considered to be an employee that person must be employed for wages in any kind of work etc. In this case the controversy really relates to the actual connotation of the expression "any person who is "employed for wages in any kind of work".

54. Section 2 (g) defines the expression "factory" as follows :

" "Factory" means any premises, including the precincts thereof, in any part of which a manufacturing process is being carried on or is ordinarily so carried on whether with the aid of power or without the aid of power".

As I mentioned earlier, it may be, in view of the very broad definition of this expression, the establishment, in each of these cases, can well be considered to be a factory. The expression "Industry" is again defined in Section 2(1) as follows :

" "Industry" means any industry specified in Schedule 1, and includes any other industry added to the Schedule by notification u/s 4."

55. u/s 4 power is given to the Central Government by notification to add any other industry in the schedule, But before the provisions of the Act can be applied to a particular industry, the provisions of Section 1 (3) will have to be fully satisfied. That is, a general application of the Act to the textile industry, as such can be made by the issue of a notification u/s 4 by including textile industry in Schedule I; but before a particular establishment being a textile industry, can be brought in for the purpose of the application of the Act or Scheme, the provisions of Section 1(3) will have to be satisfied.

56. u/s 5, provision is made for the framing of a scheme for the establishment of provident funds.

57. Section 6 makes it obligatory on the part of the employer to contribute 6 1/2 per cent of the basic wages and the dearness allowance for the time being payable to each of the employees and there is also provision for contributions being made by the employee also.

58. Section 7 gives power to the Central Government for modification of a scheme.

59. Section 8 gives jurisdiction to the authority concerned to collect as arrears of land revenue any arrears of contributions or damages that have been fixed u/s 14B or any other amounts that may be payable by an employer under the provisions of the statute and the mode of recovery has been indicated as arrears

of revenue, i.e., coercive process can be adopted for the purpose of recovering the same from an employer.

60. I am skipping over the other sections. u/s 13 provision is made for the appointment of Inspectors and Section 14 prescribes the penalty for non-payment of contributions, damages, etc. A perusal of Section 14 will show that very severe penalties are prescribed.

61. Provision is made u/s 14-B for recovery of damages not exceeding 25 per cent of the defaulted contributions from the employer concerned and as mentioned earlier such damages can also be recovered as arrears of land revenue under Section 8 of the Act. The only other material provisions are Sections 19 and 19A. Sections 16, 17 and 18 do not arise for consideration in these proceedings.

62. Section 19 deals with delegation of powers by appropriate Governments. Section 19-A on the scope of which considerable arguments have been advanced by learned counsel for the petitioners and the learned Government Pleader, is as follows :

"19-A. Power to remove difficulties. -- if any difficulty arises in giving effect to the provisions of this Act, and in particular, if any doubt arises as to

(i) Whether an establishment which is a factory is engaged in any industry specified in Schedule 1;

(ii) Whether any particular establishment is an establishment falling within the class of establishments to which this Act applies by virtue of a notification under Clause (b) of Sub-section (3) of Section 1;

(iii) the number of persons employed in an establishment; or

(iv) the number of years which have elapsed from the date on which an establishment has been set up; or

(v) whether the total quantum of benefits to which an employee is entitled has been reduced by the employer,

"the Central Government may, by order, make such provision or give such direction, not inconsistent with the provisions of this Act, as appears to it to be necessary or expedient for the removal of the doubt or difficulty; and the order of the Central Government, in such cases, shall be final".

63. I will have to revert to this provision later, when considering the interpretation to be placed upon the scope of this particular provision. At this stage I will only mention that power is given to the Central Government, in the case of any difficulty arising in giving effect to the provisions of the Act and if any doubt arises in respect of the matters mentioned in Clauses I to V of Section 19-A, pass an order or issue appropriate directions in order to remove the doubt or difficulty and that direction should not be inconsistent with the provisions of the

Act. There is also a provision to the effect that the order of the Central Government passed in such cases shall be final.

64. The above, generally is the scheme of the ACT. u/s 1 (3) the conditions are prescribed which will have to be satisfied before an Act can be made applicable to a particular establishment. The other provisions, namely, Section 6 making it obligatory on the part of the employer to pay contribution, Section 8 prescribing the mode of recovery of these dues and other amounts as arrears of land revenue; and Section 14 which imposes rather heavy penalties for non-payment of contributions and other amounts and even criminal liability being imposed, all these will clearly show that if the Act is applicable to particular Industries in question and if there is default in the matter of payment of contributions or other amounts, the managements in question -are visited with very heavy penalties.

In my view, these very severe and stringent provisions enacted by this statute as against the employers, in the matter of recovery of the amounts as if they were arrears of land revenue and also imposing very severe penal consequences upon them for non-compliance with the provisions of the statute, indicate that the Act and the Scheme can be put into effect only after a complete and final adjudication has been made by a proper authority after ascertaining and finding on correct facts, about the applicability of the Act to the particular establishment. These aspects will have also considerable bearing in deciding about the scope of Section 19-A of the Act.

65. in this case, as I mentioned earlier, unfortunately no attempt has been made by either the Regional Provident Fund Commissioner or by the Parties themselves to invoke the provisions of Section 19-A of the Act. No doubt, the learned Government Pleader tried his very best to persuade me that in this case it cannot be considered that there is any doubt at all regarding the legal relationship that exists between the employer and the employees. The learned Government Pleader also urged rather strenuously I should say, that the mere circumstance that the establishments in question are registered under the Factories Act and the further fact that they are maintaining Muster Rolls regarding the workers employed by them and Inasmuch as the managements have not controverted the position that those persons are not workers, under the Factories Act, there is no difficulty or doubt which can be said to exist in this case for not making the provisions of the Employees' Provident Funds Act applicable to the managements in question.

I should frankly say that I find considerable difficulty in accepting this approach that is sought to be made by the learned Government Pleader on behalf of the respondent. No doubt, there is considerable difference of judicial opinion as to who exactly is to make an approach to the Central Government u/s 19-A, and as to whether persons like the petitioners, namely, the managements can also invoke the jurisdiction of the Central Government u/s 19-A or under what circumstances the authorities like the respondent in this case can approach the Central Government u/s 19.

66. Before I go into this aspect, I may also advert to the definition of two expressions occurring in the Factories Act, namely, the expression "workman" occurring in Section 2(1) and the expression "factory" in Section 2(m). It will be seen that u/s 2 (1) the expression "worker" is defined as meaning "a person employed, directly or through any agency, whether for wages or not in any manufacturing process or in cleaning any part of the machinery or premises used for a manufacturing process, or in any other kind of work incidental to, or connected with, the manufacturing process, or the subject of the manufacturing process" whereas the definition of the expression "employee" occurring in Section 2 (f) of the Employees' Provident Funds Act is to the following effect :

" "Employee" means any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of an establishment, and who gets his wages directly or indirectly from the employer, and includes any person employed by or through a contractor in or in connection with the work of the establishment,"

67. Again Section 2(m) of the Factories Act defines the expression "Factory" as follows :

" "factory" means any premises including the precincts thereof-

(i) whereon ten or more workers are working, or were working on any date of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or

(ii) whereon twenty or more workers are working or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on but does not include a mine subject to the operation of the Mines Act, 1952 (XXXV of 1952) or a railway running shed".

68. Though in each of these writ petitions, the respective managements have made a very large prayer to the effect that a writ of prohibition should be issued by this Court as against the respondent, the Regional Provident Fund Commissioner, restraining him from enforcing the provisions of the Employees' Provident Funds Act, 1952, and the Scheme as against these managements, when it was indicated that such a large prayer cannot be granted for all time, learned counsel Mr. M. I. Joseph appearing for one set of managements, and Mr. Bhaskaran Nambiar, learned counsel appearing for another set of managements, have fairly stated before me that the prohibition that they ask for as against the respondent can be limited to this extent; namely, that no proceedings are to be taken to enforce the provisions of the Act, till an adjudication on the applicability or otherwise of the statute is made by the Central Government u/s 19-A.

69. Section 19-A which has been extracted earlier, by itself does not give any indication as to who exactly is to invoke the jurisdiction of the Central Government and under what circumstances. According to the learned

Government Pleader, Section 19-A deals with two aspects, (1) difficulty arising in giving effect to the provisions of this Act; and that difficulty can arise only when the Act has been made applicable and, therefore, the difficulty must be the difficulty of the officer and not of the party; (2) doubt in respect of matters referred to in Clauses (i) to (v). That doubt also must be of the officer concerned and not of persons like the petitioners in these proceedings. That is, according to the learned Government Pleader, the difficulty envisaged in Section 19-A in giving effect to the provisions of the statute or any doubt regarding Clauses (i) to (v) of Section 19-A must be a difficulty experienced by the authorities working the Act or a doubt entertained by the authorities.

In this case the authorities have indicated clearly by the stand taken by them in the counter-affidavit, as well as the correspondence, that they are satisfied that each of these petitioners employs 20 or more persons and they also give reasons for coming to that conclusion. Therefore, it cannot certainly be stated in this case that there is any difficulty, in giving effect to the provisions of the statute nor can it be stated that there is any doubt in respect of any of the matters mentioned in Clauses (i) to (v) of Section 19-A. In particular, the learned Government Pleader urged that, if at all, u/s 19-A a doubt can arise in these matters under Section 19-A (iii) in respect of the number of persons employed in an establishment. But the Inspector of Provident Fund has clearly stated, after a reference to the registration of these factories under the Factories Act that it is established that the petitioners are employing 20 or more persons in these establishments. Therefore, the learned Government Pleader urged, there is no scope for any doubt, even in this regard.

70. On the other hand, both Mr. M. I. Joseph and Mr. Bhaskaran Nambiar urged that there is no provision anywhere in the statute excepting u/s 19-A providing for an adjudication or an enquiry into the conditions, the existence of which alone can give jurisdiction to the authorities concerned to enforce the provisions of the Act. On the other hand, Section 1 (3) makes the Act applicable to a factory which is included in Schedule I and which employs 20 or more persons. The petitioners in each of these cases have been raising a controversy from the very beginning regarding the assumption of the Regional Provident Fund Commissioner that the establishments in question are employing 20 or more persons. That point has not been investigated.

Both counsel go to the extent of urging that there is absolutely no jurisdiction either in the Inspector who has sworn to the counter-affidavit in these matters or even for the matter of that in the Regional Provident Fund Commissioner, who is the respondent in each of these matters to entertain such an objection and adjudicate upon that point. On the other hand, both the learned counsel urged it is in view of these circumstances, that the statute has considered it necessary to clothe the Central Government with jurisdiction to adjudicate upon such matters. Both the learned counsel for the petitioners were not inclined to accept the contention of the learned Government Pleader that the difficulty arising in giving

effect to the provisions of this Act, referred to in the earlier part of Section 19-A must be the difficulty of the officer concerned and not of the party. The learned counsel urged that the controversy that arises in these matters is provided for in particular by Section 19-A (iii) of the Act. It is categorically stated that if any doubt arises in particular regarding the number of persons employed in an establishment, the jurisdiction to investigate that question is exclusively vested in the Central Government.

71. Both the learned counsel also urged that inasmuch as the Regional Provident Fund Commissioner is attempting to enforce the provisions of this Act and inasmuch as these objections are raised by the parties concerned, there was a duty on the part of the authority functioning under the statute, to refer the doubt for consideration and adjudication by the Central Government. Inasmuch as the Regional Provident Fund Commissioner has not cared to make a reference u/s 19-A and the jurisdiction of the Central Government has not been invoked so far, both the learned counsel urged that the matter should be left as it is by issue of a writ of prohibition restraining the authority concerned from enforcing the provisions of the statute, till an adjudication is made by the Central Government u/s 19-A as to the number of persons employed in these establishments.

72. In fact both the learned counsel are also prepared to take up the position that there is absolutely no obligation or duty cast upon persons like the petitioners, to approach the Central Government u/s 19-A.

73. As I mentioned earlier and as will be clear from the decisions to which references will be made, there is considerable controversy regarding the scope of Section 19-A. The learned Government Pleader has not been able to draw my attention to any other provision in this statute where jurisdiction is given either to the Inspector or to the Regional Provident Fund Commissioner, the respondent in these proceedings, to entertain an objection like the one that arises for consideration in these proceedings and adjudicate upon the same one way or the other. The only provision, so far as I could see, that has been brought to my notice by the learned counsel for the petitioners and the learned Government Pleader is the provision contained in Section 19-A.

It is not really necessary for me to consider in these proceedings as to whether the difficulty that is contemplated in Section 19-A is to be a difficulty experienced only by the authority concerned, when giving effect to the provisions of the Act I am only concerned in these proceedings to find out when there is fit doubt as in this case regarding the number of persons employed by the petitioner managements in their establishments, who is to resolve that doubt and who exactly is to invoke the jurisdiction of the authority concerned, for purpose of resolving this doubt.

74. The earliest decision bearing on the matter is the decision of Mr. Justice Rajagopalan of the Madras High Court reported in Annamalai Mudaliar and Bros. Vs. Regional Provident Fund Commissioner, Madras and Others, . No doubt, the

learned Judge had no occasion to consider in that case as to who exactly, namely, whether the authority concerned or the management concerned, has to make an approach to the Central Government u/s 19-A. There is no controversy that one of the points that arose for consideration before the learned Judge was as to whether the management in question was employing 50 or more persons in a particular industry. Provision was made in Section 19-A of the Act as it stood at the material time, in Clause (ii), "Whether fifty or more persons are employed in an establishment" the Central Government may, by order, make such provision or give such direction not inconsistent with the provisions of the Act.

75. That provision has now been modified in Section 19A as it now stands and that modification is really "as regards the number of persons employed". But the principle laid down by the learned judge does not make any difference because the controversy that raged between the Department and the management there was as to whether the establishment in question employed 50 or more persons and that was clearly mentioned as a doubt, in respect of which jurisdiction was given u/s 19A (ii) of the statute as it stood at the material time to the Central Government to adjudicate upon that doubt.

76. The contention that appears to have been taken before the learned judge was that inasmuch as there has been no adjudication by the Central Government on this aspect and inasmuch as the focal authorities, namely, the Regional Provident Fund Commissioner has no jurisdiction to adjudicate upon this point and as a matter of fact has not also adjudicated upon that aspect, there is no further jurisdiction in the authorities concerned to enforce the provisions of the statute. The learned Judge adverts to this aspect and is of the view that what the petitioner in that case wants is really that the demands for contribution issued to it by the appropriate authority should not be enforced till the question whether the petitioner's is a factory where 50 or more persons are employed has been decided by the Central Government u/s 19A. The learned Judge winds up his conclusion on this aspect by saying that the petitioner is certainly entitled to get that relief on the short ground that there is a dispute and the dispute has to be decided u/s 19A.

The learned judge is of the view that on this conclusion arrived at by him that there is a dispute regarding the number of persons employed in the factory and inasmuch as there has been no adjudication by the Central Government u/s 19A the writ petition will have to be allowed on that short ground. But will be seen that in that case the statement of facts regarding the nature of the employment obtaining in the said factory does not appear to have been in serious controversy between the management and the department. Therefore, in view of the admitted facts, the learned Judge considers the question as to whether it can be stated that there is an employer and employee relationship. Ultimately the learned judge comes to the conclusion that the plea of the department that there is a relationship of employer and employee cannot be accepted; and in the end the learned Judge granted the prohibition as prayed for.

77. As I mentioned earlier, the learned Judge does not advert to the question as to who has to invoke the jurisdiction of the Central Government u/s 19A. In fact, Mr. M. I. Joseph and Mr. Bhaskaran Nambiar rather strenuously urged that this procedure may be adopted by this court also, and the matter be allowed to rest there, by a prohibition being issued restraining the Department from enforcing the provisions of the Act, inasmuch as there has been no decision u/s 19A, by the Central Government. The question is whether this plea urged by the learned counsel for the petitioners can be accepted in toto.

78. This aspect I will consider, after referring to the decisions of the other High Courts, bearing on this matter. But before I pass on to the next decision that has been placed before me, it is also desirable to state that Mr. Justice Rajagopalan, in the earlier part of his judgment, in his decision referred to above, has expressed the view, that Act 19 of 1952, has provided for a specific machinery in Section 19-A for the determination of a dispute like the one before him, namely, as to whether the factory employs 50 or more persons and inasmuch as that machinery has not been resorted to, the learned Judge does not think that he would be justified in constituting himself a tribunal of first instance to go into a disputed question of fact and give a decision thereon.

79. The next decision that has been placed before me is the Division Bench decision of the Bombay High Court, reported in Nagpur Glass Works Ltd. Vs. Regional Provident Fund Commissioner, Bombay, . Though the judgment of the Bombay High Court is later to that of the decision of the Madras High Court referred to earlier, the decision of the Madras High Court does not appear to have been placed before the learned Judges of the Bombay High Court.

80. it will be seen that Mr. Justice Mudholkar, and Mr. Justice Tambe, in this decision considered the scope of Section 19-A of the Act in question. After quoting the said section and the argument based upon it, inasmuch as there has been no adjudication by the Central Government regarding the point in controversy, the learned Judges express the view that as they read the provision it is not obligatory upon the Regional Provident Fund Commissioner, who was the respondent before them, to refer the matter to the Central Government for decision.

It is the further view of the learned Judges that the said provision does not apply to every case where an interpretation put upon any entry in the Schedule is disputed, but applies only where the Central Government or the Regional Provident Fund Commissioner finds that there is a difficulty in regard to the interpretation to be placed upon the Schedule. It is the further view "of the learned Judges that the omission of the Regional Provident fund Cotnmis" sioner to move the Central Government in that regard, does not in any way, affect his powers to realise the contributions under the Act from the establishments.

81. The contention before the learned Judges, taken by the employer, in question, was that inasmuch as no steps had been taken by the respondent

officer to get the views of the Central Government, no action can be taken to enforce the provisions of the Act in question and that contention has been rejected by the learned Judges in the manner indicated above.

82. it will be seen that, according to the view of the learned Judges, it is not obligatory on the Regional Provident Fund Commissioner to make a reference, however desirable it may be; and it is the further view of the learned Judges that the Section comes into play only where the Central Government or the Regional Provident Fund Commissioner finds there is a difficulty in regard to the interpretation to be placed upon the entries in the schedule. The manner of approach made by the learned Judges, leads me to infer that the Court then was adverting only to the first part of Section 19-A of the Act which deals with "If any difficulty arises in giving effect to the provisions of this Act", and that the learned Judges had no occasion to consider the second part of Section 19-A wherein provision is made regarding any doubt arising as to the matters mentioned in the five sub-clauses to the said Section.

Therefore, this decision will have to be confined only to cases of difficulty in giving effect to the provisions of the Act and, therefore, the view of the learned Judges must also be taken to be that under such circumstances, the difficulty must be the difficulty experienced, not by a party, like the petitioners before me, but really of the Central Government and the Regional Provident Fund Commissioner.

83. As I mentioned earlier, in the particular cases before me, the question arises, not under the first part of Section 19-A as to whether any difficulty arises in giving effect to the provisions of the Act, but really on the latter part of Section 19-A wherein specific provision is made regarding doubt arising as to the various matters mentioned in the five sub-clauses mentioned in Section 19-A. In particular, the point in these cases relates to a doubt, as to the number of persons employed in each of these factories, provided for specifically in Clause (iii) of Section 19-A.

84. Therefore, this decision as such, if it may say so with respect, does not give any guidance as to whether the doubt that is referred to in Section 19-A regarding the various matters referred to in the sub-clauses is to be the doubt only of the officer concerned, or whether it can be the doubt also of a party like the petitioners, before me, no doubt, the learned Government Pleader urged that the principles laid down in this decision apply to both aspects dealt with by Section 19-A.

85. The later decision reported in *The Nagpur Glass Works Ltd. Vs. The Regional Provident Fund Commissioner and Others*, of a Division Bench consisting of Mr. Justice Mudholkar, and Mr. Justice Naik, had again to consider the scope of Section 19-A. Pausing here for a minute, it may be stated that Mr. Justice Mudholkar, who is a party to this decision, was also a party to the earlier decision reported in *(S) Nagpur Glass Works Ltd. Vs. Regional Provident Fund*

Commissioner, Bombay, , along with Mr. Justice Tamba.

86. The latter decision appears to be a sequel to the decision rendered in the earlier case reported in (S) Nagpur Glass Works Ltd. Vs. Regional Provident Fund Commissioner, Bombay, because the parties are the same. There are various points in controversy which arose for adjudication before the learned Judges. Excepting stating that on a prior occasion certain aspects of the matter have been decided and adjudicated upon by th" Bombay High Court which must be taken to be a reference to the earlier decision in (S) Nagpur Glass Works Ltd. Vs. Regional Provident Fund Commissioner, Bombay, , there is no other reference, in the later decision of the Bombay High Court, to the principles laid down in the earlier decision of the Bombay High Court in (S) Nagpur Glass Works Ltd. Vs. Regional Provident Fund Commissioner, Bombay, . In my view there is really a modification of the views expressed by the earlier decision in the later Bombay decision reported in The Nagpur Glass Works Ltd. Vs. The Regional Provident Fund Commissioner and Others, , to both of which, as I have stated, Mr. Justice Mudholkar was a party, if the earlier decision is to be considered to have laid down principles applicable to both cases of difficulty and doubt.

87. it will be seen that in the latter case, from the facts stated by the learned Judges, the employer had actually filed an application before the Central Government inviting an adjudication u/s 19-A of the Act. No doubt, fn the said letter sent to the Central Government, the provisions of Section 19-A do not appear to have been, as such, adverted to by the employer; but the learned Judges, after referring to the correspondence that passed between the Regional Provident Fund Commissioner and the employer as also the suggestion made by the Regional Provident Fund Commissioner to the employer to make a reference to the Central Government, if, he is not satisfied with the decision of the authorities, are of the view that the company or the management making such a reference under such circumstances amounts to making an application by the management to the Central Government u/s 19-A of the Act. These are to be seen from the statement of facts contained in the judgment irself.

88. Again, the learned Judges consider the attack made against the legality of the proceedings taken by the Regional Commissioner when there has been no adjudication, u/s 19-A of the Act. So far as that is concerned, the learned Judges refer to Section 19-A, and they also proceed on the basis that the party, namely, the management in that case, has actually made an application to the Central Government under the terms of Section 19-A, and that the Central Government has not passed any orders u/s 19-A with reference to the application made by the management. On this basis, the learned Judges proceed to consider the legal position

89. in this connection, the learned Judges refer to the decision of Mr. Justice Rajagopalan in (S) Annamalai Mudaliar and Bros. Vs. Regional Provident Fund Commissioner, Madras and Others, . So far as that is concerned, the learned Judges, after adverting to the decision of the Madras High Court and the basis of

that decision, are of the view that the Madras High Court has held on the short ground that there was a dispute regarding the number of persons employed between the management and the department and as that dispute has not yet been adjudicated upon u/s 19-A, the writ of prohibition must issue. After advertng to this aspect the learned Judges proceed to state at page 164 as follows:

"In our view, the above decision has no bearing on the facts of the present case. The opening words of Section 19-A make a distinction between a difficulty arising fn giving effect to the provisions of the Act and to a particular doubt which arises in respect of any of the matters enumerated in Clauses (i) to (iv). So far as the difficulty is concerned, if is of a general character and it must arise in giving effect to the provisions of the Act. It is significant to note that the Madras case related to doubts in relation to Clauses (ia) and (iii) of Section 19-A. So far as the expression "difficulty arising in the matter of giving effect to the provisions of the Act is concerned" it is clear that the difficulty must be a difficulty experienced by the authorities, who are charged with the administration of the provisions of the Act and the Provident Funds.

That means that if the authorities experienced any difficulty in the actual implementation of the provisions of the Act, they may ask the Central Government to pass an order making appropriate provisions or give appropriate directions. But these provisions or these directions must not be inconsistent with the provisions of the Act. If this interpretation is correct, then it follows that if anybody can make a reference to the Central Government for removing the difficulty arising in the implementation of the Act, it is the Regional Commissioner or the other appropriate authority. It is not open to the factory or the establish- ment or anyone connected therewith, to approach the Central Government calling upon them to make a provision or to pass an order in that regard.

It is possible to argue that so far as a particular doubt in regard to the matters enumerated in Clauses (i) to (iv) is concerned, the reference to Central Government may be made by anyone and not merely the authorities administering the Funds. The decision of Mr. Justice Rajagopalan perhaps may have been influenced by this consideration. We do not feel called upon to decide this aspect of the matter".

From the extract quoted above, it will be clear that the learned Judges of the Bombay High Court proceed on the basis that it is possible to argue that so far as 3 particular doubt, fn regard to the matters enumerated in Clause (i) to (iv) of Section 19-A, as it stood at the material time, is concerned, the reference to the Central Government may be made by anyone and not merely the authorities administering the Funds. The learned Judges are also of the view that the decision reported in (S) Annamalai Mudaliar and Bros. Vs. Regional Provident Fund Commissioner, Madras and Others, may have been influenced by that consideration; and they also state that the Court is not called upon to decide that

aspect because in the matter before them the question that has been raised by the management has no relation whatever to any doubt arising in respect of Clauses (i) to (iv) of Section 19-A.

90. I am only adverting to this aspect in some great detail, because this decision cannot certainly be taken to expressly dissent from the views expressed by Mr. Justice Rajagopalan in (S) V. Dhanmull Sowcar Vs. Secretary, Regional Transport Authority at Vellore, North Arcot and Others, when there is no doubt in respect of the matters specifically provided in the sub-clauses to Section 19-A of the Act. The learned Judges of the Bombay High Court have categorically stated that the petitioner in that case has no case that there is any doubt arising with respect to Clauses (i) and (iv). The learned Judges were only considering a case of a difficulty arising in giving effect to the provisions of the Act and that aspect is emphasised by the learned Judges.

91. So far as that is concerned, the learned Judges have discussed this aspect and they are also of the view that the Central Government is not bound to issue any direction u/s 19-A; and all that is laid down is if they choose to make provision or issue a direction, that direction should not be inconsistent with the provisions of the Act. It is also the view of the learned Judges that merely because the letters addressed to the Central Government by the party in question, namely, the management, have gone una-answered, in regard to a difficulty, which is of the making of the petitioner himself, it does not starra to reason to hold that the Regional Commissioner cannot enforce his demand.

92-93. The learned Judges further state that the decision of the Madras High Court will not be correct, if it is intended to apply to the first question, namely, with regard to the difficulty in giving effect to the Statute. But they say clearly that they refrain from expresses any opinion as to whether the decision of the Madras High Court is correct or not in so far as it relates to doubts in respect of matters provided in Clauses (i) to (iv).

94. it will be seen that the earlier Bombay decision in (S) Nagpur Glass Works Ltd. Vs. Regional Provident Fund Commissioner, Bombay, , has proceeded on the basis that in cases of difficulty arising in giving effect to the provisions of the Act, the difficulty must be of the Regional Provident Fund Commissioner concerned and not that of the party at all. The later Bombay decision in The Nagpur Glass Works Ltd. Vs. The Regional Provident Fund Commissioner and Others, holds that it is possible to argue that in cases coming under the specific clauses relating to doubt enumerated in Section 19-A is concerned, it may also be open to a party to move the Central Government. But this decision leaves the said question open and does not express any final opinion.

Inasmuch as it deals only with cases of difficulty, the decision rendered on that basis, is inconsistent with the decision in (S) Nagpur Glass Works Ltd. Vs. Regional Provident Fund Commissioner, Bombay, , The later decision of the Bombay High Court in The Nagpur Glass Works Ltd. Vs. The Regional Provident

Fund Commissioner and Others, does not specifically dissent from the view expressed by Mr. Justice Rajagopalan wherein he has specifically, dealt with a case of doubt arising under the particular sub-clause in Section 19-A. The learned Judges categorically say that the management before them has absolutely no grievance that there is any doubt regarding the matters provided under the various Sub-clauses in Section 19-A.

On the other hand, the whole case was argued and dealt with on the basis that there is a difficulty in giving effect to the provisions of the Act and that difficulty, the learned Judges are of the view, must be a difficulty experienced by the Central Government or the Regional Provident Fund Commissioner and it cannot be a difficulty experienced by a party as such.

95. In my view both the Bombay decisions do not deal with cases of doubt existing regarding the matters taken in by the sub-clauses in Section 19 A. The learned judges do not express any opinion one way or the other. On the other hand, as I have already indicated, the learned Judges in the later decision, are of the view that it is possible to argue that where a doubt arises, a party also may move the Central Government for adjudication u/s 19-A.

96. Before I pass on to the decision of the Patna High Court, incidentally I may also state that the provisions of Section 19-A of the Act were challenged as ultra vires and invalid before the Calcutta High Court and that contention found favour with a learned Judge of that Court as will be seen from the decision reported in *Bharat Board Mills Ltd. Vs. The Regional Provident Fund Commissioner and Others*, . But this view has not been adopted or approved by a Division Bench judgment of the Andhra Pradesh High Court reported in *J. and J. Dechane v. Regional Provident Fund Commissioner*. (1960) 1 Lab LJ 765, a decision of Chandra Reddy, C. J. and Narasimham, J. It is not really necessary for me to go into that aspect in this case, because though a contention has been raised by the various writ petitioners in these petitions challenging not only the statute but also some of the provisions of the statute, and in particular Section 19-A as invalid, that contention has not been pressed before, me, and therefore, I express no opinion on these aspects.

97. The next decision to which reference has to be made is the decision of the Patna High Court in *Bankim Chandra Chakravarty and Another Vs. Regional Provident Fund Commissioner and Others*, , a decision by Ramswami C.J. and Mr. Justice Choudhary. In this case it will be seen that the learned Judges expressly dissent from the views expressed by Mr. Justice Rajagopalan in *(S) Annamalai Mudaliar and Bros. Vs. Regional Provident Fund Commissioner, Madras and Others*, . Similarly, I may also state that in the decision, the decision of the Patna High Court rendered on 11-2-1958, and which I am immediately considering, has not been referred to by the learned Judges of the Bombay High Court.

98. in this case, before I consider the actual principles laid down by the learned Judges, it may be necessary to state a few facts obtaining in that case and which

were not in controversy before the learned Judges, The management had been originally prosecuted by the department for non-compliance with the provisions of the statute and there was a conviction by the Sub-Divisional Magistrate in the first instance. But, no doubt, on appeal before the District Magistrate, the conviction of the management was set aside. But the learned Judges take note of the fact that even though the District Magistrate set aside the conviction and acquitted the management, the District Magistrate nas categorically agreed with the findings of tact arrived at by the Sub Divisional Magistrate, namely, that the Employees' Provident Funds Act applied to the particular establishment in question and that the said establishment, as a matter of fact, was employing 50 or more persons. These findings of fact had to be faced squarely by the management in the writ proceedings.

99. There were further proceedings by way of prosecution launched by the, Department when default was made for later years and at that stage the management came to the High Court seeking relief under Article 226 of the Constitution. One of the contentions that, appears to have been raised was that inasmuch as the question as to whether the management employs 50 or more persons and which is a matter referred to in one of the clauses relating to a doubt in Section 19A, has not been adjudicated upon by tne Central Government, the authorities concerned have no jurisdiction to enforce the provisions of the Employees Provident Funds Act.

100. There were several other matters which appear to have been in controversy before the learned Judges and it is not necessary for me to advert to those aspects. After adverting to the findings of the criminal Courts regarding the Act applying to the petitioner-management, and the management, in that case, actually employing 50 or more persons, the view of the learned Judges appears to be that after such findings of the criminal Courts there could not have been any justification for the management entertaining a doubt that they are not employing 50 or more persons. The learned Judges also advert to the fact that even faced with such clear findings of the criminal Courts, the management has not taken any trouble to P"ace any satisfactory evidence to show that they are not, as a matter of fact, employing 50 or more persons so as to make the provisions of the Act applicable. The learned Judges are also of the view that if the petitioner wants to have relief at the hands of the Court, there was a duty on his part to have brought on record materials on which he wanted to base his prayer for the issue of a writ, and satisfy the learned Judges that the view of the criminal Courts is erroneous; and in that task, the learned Judges say that the management has miserably failed.

101. After adverting to the various matters which were raised before the learned judges, the Patna High court considers the scope of Section 19A of the Act. So far as that is concerned, the contention taken by the management appears to have been that the management has been an along raising a dispute as to whether the provisions ot the Act are applicable or not and the same has to be

settled by the Central Government as required u/s 19A; and inasmuch as the Central Government has not adjudicated upon that question, there is no jurisdiction in the authorities concerned, notwithstanding the criminal proceedings, to enforce the provisions of the Act.

102. The learned Judges after adverting to this contention quote the provisions of Section 19A of the Act and also the contention of the parties concerned that the provisions of the Act cannot be enforced till a doubt, that has been raised, is considered and adjudicated upon by the Central Government. The learned Judges at page 318 observe;

"The section, in my opinion, envisages a direction by the Central Government when any difficulty arises in giving effect to the provisions of the Act, and, if any doubt arises as to the matters referred to in that section in the mind of the authority who has to deal with the matter. If that authority does not feel any difficulty or has no doubt about any of the matters referred to in the section, there is no scope for any direction being given by the Central Government at the instance of a party who may raise a dispute over the matter. The question of any Dispute being raised by the party concerned is foreign to the section".

The above extract will clearly show that it is the view of the learned Judges, that in cases of any difficulty arising in giving effect to the statute and in case of any doubt arising u/s 19A, that difficulty or doubt must be one experienced by the Authority that has to deal with the matter, if that authority does not feel any difficulty or doubt about any of the matters" referred to in the section, it is their further view that there is absolutely no scope for any direction being given by the Central Government at the instance of a party. The learned Judges also categorically lay down that the question of any dispute being raised by a party concerned, is foreign to that section.

103. After expressing the view as aforesaid, the learned Judges consider the decision of Mr. Justice Rajagopalan in (S) Annamalai Mudaliar and Bros. Vs. Regional Provident Fund Commissioner, Madras and Others, , which was relied on by the management in that case. The learned Judges, after considering, the circumstances under which the said Madras judgment was rendered, are of the view that they are unable to accept the correctness of that decision, it is the further view of the Patna High Court that the learned Judge of the Madras High Court had decided a point, by reading something into the section which is not there. According to the learned Judges, the section has been read as if it contains a provision regarding a "dispute", whereas Section 19-A relates to a case of doubt, the learned Judges are not inclined to accept the correctness of the decision. If I may say so with respect, the learned Judges of the Patna High Court, have in the extract quoted earlier by me, used the expression "dispute".

104. The decision of the Patna High Court, no doubt, categorically dissents from the view expressed by Mr. Justice Rajagopalan in (S) Annamalai Mudaliar and Bros. Vs. Regional Provident Fund Commissioner, Madras and Others, . The

decision in the Patna case deals with cases of both difficulty and doubt u/s 19-A.

105. The only other decision which has to be referred to, and which has been brought to my notice is the decision of the Allahabad High Court reported in Delhi Cloth and The Delhi Cloth and General Mills Co. Ltd., Delhi Vs. The Regional Provident Fund Commissioner, U.P., . That is a judgment of a learned Judge of the Allahabad High Court, Mr. Justice Mathur.

106. There again, several points arose for consideration before the learned Judge and it is not really necessary for me to advert to those aspects. Even before the Allahabad High Court, I do not find any reference to the two judgments of the Bombay High Court or of the judgment of the Madras High Court or the judgment or the Patna High Court, referred to by me earlier, though this decision was rendered on 22-12-1959. After considering the various matters that were pressed before the learned Judge, in particular, the learned Judge taxes up the question regarding the scope of Section 19A. So far as that is concerned, the contention that was raised, was that in view of Section 19A of the Act, the Regional Provident fund Commissioner has no jurisdiction to decide whether the establishment of the management in this case was or was not governed by the provisions of the Act because, according to the petitioner, in that case such a duty was cast only upon the Central Government to make an order to remove the difficulties which arise in giving effect to the provisions of the Act.

107. The learned Judge, after stating the contention of the party, rejects the contention on two grounds. The first ground for rejection was that the law is clear and is not capable of two interpretations. Evidently the matter before the learned Judge related to mere interpretation of the particular sections of the statute or interpreting particular expressions occurring in the schedule itself. The second ground of rejection was that it is not necessary, whenever 3 dispute is raised by the management, for the Regional Provident Fund Commissioner himself to refer the matter to the Central Government for orders: but the learned Judge goes further and holds that if the management does not agree with the interpretation of the Regional provident Fund Commissioner, it was necessary for the management also to move the Central Government for issuing orders for the removal of difficulty, if any.

The learned Judge further states that inasmuch as the petitioner has not even alleged that a reference has been made by him to the Central Government, it is not open to the management to take up the contention that there has been no adjudication u/s 19A, because under these circumstances a duty rests upon the management as well and he cannot turn round and say that the order of tna Regional Provident Fund Commissioner should be quashed on the ground that no directions have been givan by the Central Government. It is on this basis, that ultimately, the learned Judge rejected the various contentions ot the petitioner management, including the one based upon Section 19(sic).

108. The question naturally arises as to the view that has to be adopted by this

Court in these proceedings.

109. Mr. M. L. Joseph and Mr. Bhaskaran Nambiar, learned counsel appearing for the two sets of managements, have strenuously urged, as I mentioned earlier, for the acceptance of the view of Mr. Justice Rajagopalan in (S) Annamalai Mudaliar and Bros. Vs. Regional Provident Fund Commissioner, Madras and Others, . That is, according to both the learned counsel, the doubt that arises for decision in these cases is specifically provided for in Section 19A (iii) to the effect that in particular if any doubt arises as to the number of persons employed in an establishment, the Central Government may give such direction, not inconsistent with the provisions of the Act, as appear to it to be necessary or expedient for the removal of the doubt or difficulty.

Therefore, both the learned counsel urged that in this case, the various correspondence that passed between the party and the officers concerned will clearly show that even at the earliest stage they have taken up the stand that one of the essential conditions for the application of the Act, namely, that there must be twenty or more persons employed, has not been satisfied. The nature of the employment of the weavers in these factories has also been given in considerable detail and the management have urged that there is no employer-employee relationship. It is the further contention of the learned counsel that the Regional Provident Fund Commissioner, who attempts to enforce the provisions of the Act must also be considered to be charged with a duty of making a reference when a doubt in respect of one of the matters mentioned in Section 19A is raised,

110. The expression "doubt" has been defined in Black's Law Dictionary as follows:

"Uncertainty of mind; the absence of a settled opinion or conviction; the attitude of mind towards the acceptance of or belief in a proposition, theory, or statement, in which the judgment is not at rest but inclines alternately to either side."

111. According to both the learned counsel, inasmuch as the authority concerned has not taken any steps to actually investigate the question of fact and collect the necessary materials and inasmuch as there has been no adjudication by the central Government u/s 19A, a writ of prohibition will have to be issued by this court restraining the department from enforcing the provisions of the Act till an adjudication is made by the Central Government on this matter u/s 19A.

112. The learned Government Pleader, on the other hand, rather strenuously urged that the principles laid down by the learned Judges of the Patna High court in Bankim Chandra Chakravarty and Another Vs. Regional Provident Fund Commissioner and Others, will have to be accepted and adopted by this Court. The learned Government Pleader urged that in every case where there is some sort of slight doubt which could be raised, whether bona fide or mala fide, whether there is any foundation or basis for raising that doubt, a duty is cast

upon the Department concerned to refer the matter to the Central Government, u/s 19A, the working of the Act will become absolutely impossible and considerably delayed also. The object of the enactment, the learned Government Pleader urged, is to provide some sort of safeguard for the employees in question and that will never be achieved.

In the alternative, no doubt, the learned Government Pleader urged, that even assuming that the view, of the Patna High Court cannot be adopted, the view of the learned Judge of the Allahabad High Court in *The Delhi Cloth and General Mills Co. Ltd., Delhi Vs. The Regional Provident Fund Commissioner, U.P.*, namely, that there is an obligation on the part of the management also, if they do not accept the stand taken by the department in cases of a doubt, at any rate, regarding the matters mentioned in the clauses in Section 19A, to invoke the jurisdiction of the Central Government u/s 19A must be accepted by this Court. And inasmuch as the petitioners have not invoked the jurisdiction of the Central Government, the learned Government Pleader urged, that the writ petition must also share the same fate as the writ petition before the learned Judge of the Allahabad High Court.

113. I do quite realise the force of these contentions. I have given these various aspects presented before me by the learned counsel for the petitioners as well as the learned Government Pleader a very serious consideration.

114. I am well aware that the statute is a benevolent statute and certainly effort must be made to give effect to the provisions as quickly as possible. I am also well aware that waiting for an adjudication by the central Government u/s 19A may mean delay in applying the provisions of the Act and the Scheme. But such circumstances, in my view, cannot certainly shut out any right that an employer also may have to challenge the stand taken by the authorities concerned that the scheme as such does not at all apply to a particular establishment.

115. The mere issue of a notification by the Central Government including the textile industry in Schedule I to the Act will not certainly enable the Department to enforce the provisions of the Act in respect of contribution as against individual establishments also, unless they are able to show that the three essential requisites for the application of the Act provided in Section 1(3) of the Act are also satisfied and that is (a) it must be a factory, (b) the factory must be engaged in an industry included in Schedule I and (c) in such a factory twenty or more persons are employed. Though the expression "employed" has not been defined in the statute, the expression "employee" has been defined in Section 2(f).

The expressions "Factory" and "Industry" have also been defined. Therefore, as I mentioned in the earlier part of this judgment, there may not be any serious controversy or doubt as to the establishments in these cases being factories u/s 2(g) or these factories being engaged in an industry included in Schedule 1, because they are handloom industries and certainly they must come under the

expression "textile industry" which has been included in Schedule I by the Central Government Notification. But the doubt or controversy centres around as to whether the third essential requirement, namely, whether in the factory 20 or more persons are employed, is satisfied or not.

116. I have already adverted to the various correspondence that passed between the management and the officers concerned. I have also indicated that there has been no attempt made by the Regional Provident Fund commissioner or his subordinates to investigate these matters and collect materials for an adjudication on that aspect. The opinions expressed by the Inspector in his counter-affidavit are based upon information obtained by him from the office of the Inspector of Factories.

117. in my view the decision of Mr. Justice Rajagopalan that in the absence of a decision u/s 19A of the Act in question by the Central Government, especially when there is a doubt which relates to the particular matters referred to in the clauses in Section 19A, the authorities concerned cannot enforce the provisions of the statute, will have to be respectfully adopted and followed.

In my view, it is not without significance that most of the matters referred to in Clauses (i) to (v) of Section 19, as it stands at present, relate to matters of a jurisdictional nature, an adjudication on which will decide as to whether the Act applies to a particular establishment or not. It must also be borne in mind, and I have also indicated when I dealt with some of the provisions of the statute, that liability for payment of contribution is created on the employer u/s 6, the manner of recovery of contribution, damages and other amounts due from an employer is provided in Section 8 by having recourse to Revenue, Recovery proceedings, and severe penalties have also been provided u/s 14 of the Act. There is also an equally stringent penal provision under Sub-section 2A of Section 14 of the Act. Apart from all these provision, there is also a right given to the Department to claim damages at the rate of 25 per cent of the contributions in case of default u/s 14B of the Act. All these are the consequences of the Act and the scheme being made to apply to an establishment.

118. I am only emphasising these aspects to show that, in my view, it cannot certainly be the intention of the legislature that on the mere statement of a subordinate officer functioning under the Statute that the particular establishment comes within his jurisdiction or within the ambit of the Act, when all these consequences will follow without a corresponding right being given to the management to challenge the stand taken by the authorities concerned.

119. I have already indicated that the learned Government Pleader has not been able to place before me any other provision in the statute except Section 19A Whereby an adjudication on essential facts has to be made and an investigation conducted by any other authority, considering the provisions of Section 19A, having this background provided by the scheme of the Act, and the total absence of any power being given to any other authority to give 3 finding on fact,

regarding the nature of relationship or the number of persons employed or other allied matters, the only reasonable conclusion, in my view, is that Section 19A is an enabling section available not only to the Department as such, but also to the managements like that of the petitioners, in these cases,

But I make it very clear once again that I am not concerned in this case to consider as to what is the position when a difficulty arises, in giving effect to the provisions of the Act contemplated by the earlier part of Section 19A. Nor am I expressing any view as to which the difficulties of the officer or party or both (sic). That question does not arise in these proceedings. I am only concerned with the limited question of doubts arising in respect of one or other of the matters provided in Clauses (i) to (v) of Section 19A and as to who can refer such doubts to the Central Government, u/s 19A. There is no restriction indicated in Section 19A.

There is no other machinery created under the Act for deciding such questions of fact. The managements will be vitally affected by the application of the Act and the scheme. Therefore, they must have an opportunity of invoking the jurisdiction of the only authority constituted under the Act, viz., the Central Government, and satisfying that authority, if possible, by placing necessary materials to show that the Act does not apply to them. If that is so, it must be held that apart from the authorities attempting to enforce the provisions of the Act, having a right or power to invoke the jurisdiction of the Central Government u/s 19-A, there is also a corresponding right and duty on the part of the management who raises the doubt regarding the applicability of the Act or otherwise with reference to the matters referred to in Clauses (i) a (v) in Section 19A to invoke the jurisdiction of the central Government and invite them to make an adjudication on such matters.

120. That aspect, no doubt, Mr. Justice Rajagopalan had no occasion to consider. That is, the learned Judge came to the conclusion that inasmuch as there is a remedy provided u/s 19A of the Act for resolving the doubt, by invoking the jurisdiction of the Central Government and inasmuch as that jurisdiction has not been invoked the Regional Provident Fund Commissioner has no jurisdiction to enforce the provisions of the Act.

Though, no doubt, both the learned counsel for the petitioners, strenuously urged that. I should adopt that principle and leave the matter there, I do not think the matter should be left like that, While I respectfully agree with the learned Judge's view that no action can be taken by the department to enforce the provisions of the statute, when a doubt has been raised and which doubt has not been resolved by the Central Government, in my view, it is really necessary to consider also as to the persons who will be competent to make a reference in cases of doubt arising u/s 19A.

121. The decision of the Bombay High Court in (S) Nagpur Glass Works Ltd. Vs. Regional Provident Fund Commissioner, Bombay, , I have already pointed out,

may have to be related only to the case of difficulty, arising in giving effect to the provisions of the statute provided for in Section 19A. As the principles laid down by the learned Judges of the Bombay High Court in that decision have got only that limited effect, it is not really necessary for me to consider that decision further. The learned Government Pleader no doubt urged that the view of the learned Judges of the Bombay High Court applies not only to cases of difficulty but also of doubts envisaged in Section 196, and that difficulty or doubt must be only of the Central Government or the Provident Fund Commissioner. I cannot accept the contention of the learned Government Pleader, because I have already shown that this decision relates only to cases of difficulty arising in the working of the Act. It is not necessary for me to express any view on that aspect.

122. Similarly, the later decision of the Bombay High Court in *The Nagpur Glass Works Ltd. Vs. The Regional Provident Fund Commissioner and Others*, I have also pointed out that the learned Judges are prepared to proceed on the basis that in cases of doubt arising u/s 19A, with special reference to the various matters provided in the clauses referred to in Section 19-A, there may be a right in the party also to move the Central Government. This decision also specifically deals with a case of difficulty u/s 19A; and here again, as such a question is not before me, I express no opinion on that aspect.

123. The learned Judges of the Bombay High Court. In their decision in *The Nagpur Glass Works Ltd. Vs. The Regional Provident Fund Commissioner and Others*, categorically, say that they are not expressing any opinion as to what is to be done when there is a doubt arising u/s 19A. Therefore, both the two Bombay decisions are certainly not authorities for the proposition that there is no power given to a party, like the petitioners, before me to approach the Central Government u/s 19A, even in cases where, there is a doubt which pertains to one or the other of the matters referred to in the sub-clauses of that section.

124. The decision of the Patna High Court in *Bankim Chandra Chakravarty and Another Vs. Regional Provident Fund Commissioner and Others*, on which considerable reliance has been placed by the learned Government Pleader and which view has been commended for my acceptance, no doubt, takes the view that the difficulty or doubt envisaged in Section 19A can only be a difficulty or doubt of the officer concerned and not that of the management. That is, the management does not come into the picture at all in considering the scope of Section 19A of the Act. If I may say so with great respect, I am not inclined to accept the views of the learned Judges of the Patna High Court, at any rate, so far as doubts are concerned.

I have already indicated the scheme of the statute, as well as the stringent provisions, both penal and financial, casting a heavy burden upon the employer when the Act is made applicable to a particular establishment. The learned Judges, if I may say so with great respect, have not adverted to some of these matters which I have taken into account, and which according to me, will throw considerable light in adjudicating upon the scope of Section 19A. Even otherwise.

It will be seen that in the case before the Patna High Court, there has been a criminal prosecution of the employer concerned and the criminal courts had categorically arrived at a finding of fact that the ACT applies and that the petitioner therein was actually employing 50 or more persons.

On one of the points in respect of which a doubt may arise, namely, whether the establishment employs 50 or more persons as per Clause 3 of Section 19A as it stood at the material time, the learned Judges were perfectly satisfied that there has been an investigation by two judicial tribunals, viz., the two criminal Courts, on this question of fact and that the management is not entitled to recussitate this matter further.

No doubt, the learned Judges expressly dissent from the judgment of the Madras High Court and come to the conclusion that the difficulty or doubt must be that or the officer. I have already Indicated, with great respect, that I am not inclined to accept this view of the Patna High Court in so far as it relates to cases of doubt u/s 19A. I express further no opinion regarding the propositions laid down by that decision about difficulties arising in giving effect to the provisions of the Act.

But if the doubt can be only that of the officer, it will follow that in all cases where the officer states he has no doubt, even in cases where there is scope for considerable doubt, it will mean that on such mere statement of the authority who is to enforce the provisions of the Act, the Act and the scheme with all these stringent provisions will apply; and there can be no controversy raised by any person; and what the management has to do is only to submit itself to the jurisdiction of the officer and the Act and also the various provisions, penal as well as financial, contained in the statute itself.

I do not think that the Legislature intended any such result to follow, especially when the statute has certainly, imposed financial obligations and also penal consequences for not complying with the provisions of the statute on an employer, and when the statute, without making any provision, has provided for such matters only u/s 19A constituted a high authority like the Central Government to investigate this matter, collect the necessary materials of fact and adjudicate upon them. That is the only recourse, so far as I could see, that the management has got in getting an adjudication on facts. No jurisdiction has been given by any other provision of the statute to either the Inspector functioning under the statute or the Regional Provident Fund commissioner, who is the respondent in these proceedings, himself to finally adjudicate and make a decision, effective and binding, as against persons like the managements.

It may also be stated that so far as I could see, the Regional Provident Fund Commissioner does not come anywhere in the statute. He comes only by virtue of certain provisions made in the scheme. He can only come in if the scheme applies. The scheme will apply only when the Act applies. When the controversy is whether the Act applies, it is rather difficult to accept the contention of the

learned Government pleader that the view of the authority like that of the Respondent must be accepted and a decision on that basis arrived at.

125. it is not really necessary for me to consider the very large stand that has been taken by the learned counsel for the petitioners in these cases that there is absolutely no jurisdiction in the Regional Provident Fund Commissioner to adjudicate upon this point. Apart from that, it may be when an officer is charged with the duty of enforcing the provisions of the Act and the Scheme, there is certainly a duty, primarily at any rate, to collect the necessary facts, in the particular circumstances so that they may be available to the Central Government at the final stage when they have to give a direction u/s 19A.

126. I am not inclined to accept the contention or the learned Government Pleader either, that in this case, inasmuch as the managements have not had recourse to the provisions of Section 19A of the Act these writ petitions must be dismissed, as the learned Judge of the Allahabad High Court did in the decision reported in *The Delhi Cloth and General Mills Co. Ltd., Delhi Vs. The Regional Provident Fund Commissioner, U.P.*, . As pointed out by the learned counsel for the petitioners, the legal position regarding these matters was not very certain; and reference to the various decisions adverted to by me clearly shows that there is a sharp difference of opinion as to whether a party has also a right to approach the Central Government u/s 19A.

I do respectfully agree with the reasoning of the Allahabad High Court, that under such circumstances, there is an obligation on the management also, if they do not agree, with the department, to refer the matter to the Central Government u/s 19A. In the cases before me, no suggestion even has been made by the respondent to the petitioners that they can refer the matter to the central Government. Having regard to all these circumstances, I do not think I will be justified in dismissing these writ petitions on this ground, namely, that inasmuch as the managements have not made any approach u/s 19 to the Central Government, they must be debarred from claiming any reliefs in these proceedings.

127. To conclude on this aspect of the case, in my view, when once a doubt has been raised in respect of one or other of the matters mentioned in Sub-clauses, (i) to (v) of Section 19A of the statute, as it now stands, and when there has been no adjudication by the Central Government either at the instance of the authorities concerned or at the instance of the managements, no further action can be taken by the authorities to enforce the provisions of the Act.

128. in this connection, Mr. Bhaskaran Namdiar, learned counsel, in particular, referred me to certain decisions of the Andhra Pradesh, Rajasthan and Allahabad High Courts, wherein the learned Judges have held on the basis of Section 9(2) of the Citizenship Act and the rules framed thereunder that when an order of expulsion is sought to be made by the State Government, they have no jurisdiction to make such an order, until the question of citizenship has been

adjudicated upon by the Central Government u/s 9(2) read with Rule 30(1) of the rules framed under the Citizenship Act. These decisions are reported; in Mohammad Khan v. Govt. of Andhra Pradesh AIR 1957 AP 1047 of Subba Rao, C. J., as he then was, and Mr. Justice Joganmohan Reddy, Hasan Khan Vs. State of Rajasthan and Others, , as well as the decision of the Allahabad High Court in Khalil Ahmad Vs. State of U.P., . Mr. Bhaskaran Nambtar, no doubt, urged that it was the primary duty or rather the essential duty of the Regional Provident Fund Commissioner who is the respondent in these cases, to make a reference to the central Government u/s 19A when the management have raised a doubt regarding the number of persons employed in their factories, and therefore, inasmuch as he has not done that, a writ of prohibition must be issued.

129. I have gone through the above decisions bearing upon the Citizenship Act and in my view the analogy relied upon by Mr. Bhaskaran Nambiar cannot be applied to these cases. I am concerned to find out from the scheme of the statute in question and in particular of the provisions of Section 19A, as to whether such an obligation is only upon the authorities concerned or upon the management or upon both. So far as that is concerned, I have come to the conclusion that there is an obligation not only upon the authorities concerned but also on the managements, to invoke the jurisdiction of the Central Government, u/s 19A, when a doubt is raised in respect of one or other of the matters referred to in Clauses (i) to (v) of Section 19A. I once again state, even at the risk of repetition, that I express no opinion as to what the legal position is, when a difficulty arises in giving effect to the provisions of the Act. I confine myself only to cases of doubts and on that aspect that doubt need not be entertained by the authority alone; but it can be a doubt entertained by the establishment also.

130. Then the question is whether this court will be justified in embarking upon a consideration of the second aspect that has been placed before me as to whether in these cases it can be held that the management employs 20 or more persons.

131. So far as that is concerned, the learned Government Pleader rather strenuously urged that even on the basis that the particular factories have been registered under the Factories Act and, according to the managements, they are keeping muster rolls and that the workers work in the factories of the managements and that they are not challenging the fact that these workers are not workers under the Factories Act, the only conclusion that is possible is the correctness of the stand taken by the department in these cases, namely, 20 or more persons are employed in these factories. That is, by accepting this contention of the learned Government Pleader, this court can hold that the third essential condition in respect of which, no doubt, parties attempt to raise a dispute, is also amply satisfied and no further investigation need be made. The managements, quite naturally, controvert this stand taken by the learned Government Pleader.

132. So far as that is concerned, if both the parties namely, the management and the authorities concerned, are in a position to place before this Court agreed

facts, from which the question of the nature of the relationship, as a point of law, can be decided by this Court, it may be that this Court can embark upon that enquiry. Or if an authority competent under the statute to adjudicate upon facts, has investigated the facts and recorded, findings one way or the other, on the basis of findings so recorded, this Court may proceed to adjudicate upon the legal relationship, that exists between the parties concerned. In these cases, neither of the circumstances indicated above is present.

133. According to the management, the workers concerned are casual workers and what is paid to them is not wages for fixed hours of work and there is no supervision or control over their manner or method of work, in fact, in O.P. No. 791 of 1981, it has been averred that they are not even bound to work in the factory regularly, On the other hand, it is -alleged that they can work outside the factories and come back with the finished products. I have also indicated with reference to the counter-affidavit filed in these cases that the inspector has not visited any one of the factories of these several petitioners for satisfying personally as how the work is carried on there.

On the other hand, he has candidly stated that his source of information is the information that he obtained from the office of the Inspector of Factories. No doubt, he proceeds to controvert some of the essential facts that are alleged in the petitioner's affidavit, such as the workers having no regular hours of work. But it is difficult to appreciate on what basis the Inspector can take upon himself the task of contradicting such . averments, when admittedly, he has not visited any one of these factories and satisfied himself as to the exact manner in which the work is carried on in these establishments and whether the statements of facts made by the petitioners represent the truth,

134. No doubt, he proceeds largely on the basis that inasmuch as the factories are registered under the Factories Act and they are maintaining muster rolls, there must be a relationship of employer and employee. He also goes further and says that the weavers working in the factories must be considered to be permanent employees and that effective control and supervision is exercised by the management. These are statements made without any attempt having been made to ascertain and investigate and check up facts. When this is the position, it is absolutely impossible for this Court to go into this aspect and adjudicate one way or the other regarding the existence or non-existence of a relationship of employer and em. ployee. In fact, in my view, it would be absolutely unfair, in the state of records in these cases, to give an adjudication, and I will not be doing justice to either the Department or to the Managements.

135. No doubt, the learned counsel for the petitioners, have referred me to the decisions of the Madras High court in Palaniappa v. Court of 1st Class Magistrate AIR 1958 Mad 602 and in re M. Ratnaswami AIR 1959 Mad 203 where the learned Judges had to consider the nature of employment that existed in handloom industries. It is not really necessary for me to go into those aspects because when materials have been collected and a finding has been recorded by

an authority, functioning under the statute, it will then be open to a Court to consider whether the essential conditions for the application of the statute exist in a given case or not.

136. in this connection, useful reference may be made to the decision of the Supreme Court in Chintaman Rao and Another Vs. The State of Madhya Pradesh, where Mr. Justice Subba Rao, delivering judgment on behalf of the Court, considers the question very elaborately, no doubt, under the Factories Act. This decision has been accepted and approved by the two later decisions of the supreme court in Shri Birdhichand Sharma Vs. First Civil Judge Nagpur and Others, and Shankar Balaji Waje Vs. State of Maharashtra, . At this stage, I may mention that according to the learned counsel for the petitioners, the principles laid down in Shankar Balaji Waje Vs. State of Maharashtra, clearly show that there cannot be any relationship of employer and employee in these cases. On the other hand, the learned Government Pleader rather strenuously urged that the facts mentioned by the Inspector in his affidavit will clearly show that according to the decision in Shri Birdhichand Sharma Vs. First Civil Judge Nagpur and Others, , the relationship of employer and employee is established in these cases.

137. I am only indicating these aspects, to show that in considering the legal relationship that exists between the workers and the managements concerned, the various principles laid down by the Supreme court in the decisions in Chintaman Rao and Another Vs. The State of Madhya Pradesh, , An 1961 SC 644 and Shankar Balaji Waje Vs. State of Maharashtra, will have to be properly borne in mind.

138. I may also indicate that if the management is able to establish the facts as found by the Supreme court in Shankar Balaji Waje Vs. State of Maharashtra, the" inevitable conclusion in these cases will have to be that the workmen concerned cannot be considered to be employees. If the Department is able to establish the necessary facts as found by the Supreme Court in Shri Birdhichand Sharma Vs. First Civil Judge Nagpur and Others, , the inevitable conclusion there again will be that a relationship of employer and employed is made out. All these cannot certainly be considered and adjudicated upon, without the essential facts being collected, investigated and found to exist by a competent authority.

The learned Government Pleader rather strenuously urged that the mere registration of a factory under the Factories Act and the further circumstance that the factory is having a muster roll and the workers work in the factory are by themselves enough to prove a relationship of employee and employer. In my view such a contention cannot be prima facie accepted at this stage, because notwithstanding the existence of some of these matters that have been pressed before me by the learned Government Pleader, the Supreme Court did not accept the contention of the Department in Shankar Balaji Waje Vs. State of Maharashtra, that the relationship of employer and employee is established. The learned Judges go further into the matter and after a consideration of the various

other factors which have been placed before them come to the conclusion that the worker concerned in that case cannot be considered to be a worker under the factories Act.

139. Therefore, the second aspect, regarding the nature of the relationship is not possible to be investigated by this Court in these proceedings, in the state of the records, as they stand at present.

140. Then the question is about the nature of the relief that the petitioners are entitled to in these proceedings. As I mentioned earlier, the large relief that has been asked for in each of these applications is for the issue of a writ of mandamus or prohibition restraining the Regional Provident Fund Commissioner from enforcing the provisions of the Act. That large relief in the manner asked for cannot be granted because if ultimately, after a proper investigation, it is found that the Act applies to these establishments, the Department will certainly be entitled to take further action. During the course of the arguments Mr. M. I. Joseph and Mr. Bhaskaran Namblar, learned counsel for the petitioners, have fairly stated that this Court can proceed on the basis that instead of the very large relief asked for in the writ petitions they are prepared to ask this Court to give only a limited relief by way of restraining the department from enforcing the provisions of the Statute, till an adjudication is made by the Central Government, u/s 19A, regarding the number of persons in these factories. That request, seems to be a very fair and reasonable one and I am inclined to accept that request in these proceedings.

141. Therefore, a writ of prohibition in each of these matters will issue restraining the Regional Provident Fund Commissioner, the respondent, in these proceedings, from enforcing the provisions of the Act pending an adjudication by the Central Government u/s 19A of the ACT, regarding the number of persons employed in each of these establishments, subject to what is stated later. For my purpose, as prima facie, the obligations must be held to be on the authorities who have to enforce the provisions of the Act, the Regional Provident Fund Commissioner, who is the respondent in these proceedings, is given one month's time from today, to make the necessary approach to the Central Government, u/s 19A.

If, however, the said authority is not inclined to make an approach to the Central Government, he must forthwith inform each of the petitioners in these matters by registered post, of his final decision, in which case, from the date of receipt of such communication the petitioners will have one month's time to make a similar approach to the Central Government u/s 19A. If the petitioners or any of them do not make any such application within the time mentioned above and under the circumstances indicated earlier, the writ petition so far as that petitioner is concerned will stand dismissed. If the jurisdiction of the Central Government is invoked u/s 19A either by the Regional Provident Fund Commissioner or by the management concerned, there will be no further jurisdiction in the Respondent to enforce the provisions of the Act till a decision is

given by the Central Government u/s 19A.

142. So far as the Jurisdiction of the Central Government is concerned, from what I have stated earlier, it follows that it is the only authority constituted under the Act which has to give a decision on facts relating to the points on which a doubt has been raised. I dare say, in discharging that responsibility, the Central Government will give a due opportunity to the parties concerned to place all their points of view regarding the respective stand taken by them. The Labour Union has intervened in these proceedings and I must say that it is also desirable that an opportunity is given to the Union also to place its point of view, before a final decision is taken by the Central Government

143. Parties in these proceedings will bear their own costs.