

(1988) 06 KL CK 0028
In the High Court Of Kerala

Employees Provident Fund Inspector	Vs	APPELLANT
The Poly Clinic (P) Ltd.		RESPONDENT

Date of Decision : 16-06-1988

Acts Referred:

Constitution of India, 1950 — Article 43
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 1

Citation : (1988) 2 ACC 559 : (1988) 2 ILR (Ker) 601 : (1989) 2 LLJ 562

Hon'ble Judges : Padmanabhan, J

Bench : Single Bench

Judgement

Padmanabhan, J.—The Employees' Provident Fund and Miscellaneous Provisions Act (for short "the Act") is a beneficent piece of social welfare legislation intended for the social security of the employees. The Act and Scheme are aimed at being extended to as much employees as possible. That is why Section 1(3) (b) authorised the Central Government to extend the provisions by notification in the Gazette to establishments, the only condition being that the concern should be an establishment and it should employ 20 or more persons. Size of the concern reflected by the number of employees and not the nature of the business transacted there is the criterion. The right to issue notifications bringing more and more establishments within its ambit is there and it will continue so long as the Act is in force. In exercise of the powers, the Central Government issued several notifications of which we are concerned only with two. They are the notification of 1964 by which establishment of "Medical Practitioners and Specialists" and the notification of 1973 by which "hospitals" are brought within the purview of the enactment.

2. Plaintiff is the "Poly Clinic (P) Ltd., Trichur admittedly an establishment employing more than 20 persons. Till 1968 it was a full-fledged hospital with in-patient departments also. It is a company registered under the Companies Act. In 1968 by a resolution of the Board of Directors the in-patient wing was closed for reasons best known to them. All other facilities are continuing. Three or four Doctors--two of them are Directors of the Company and one a share-holder--

examine patients and prescribe medicines which are supplied from the establishment itself. The concern runs a pharmacy, a blood bank, x-ray clinic and medical laboratory--all connected with treatment of patients. The attempt to bring the establishment within the purview of the Act and the Pension Fund Act and Scheme under the notification of 1964 was withdrawn by the Regional Provident Fund Commissioner himself presumably on the wrong impression that in order to constitute an establishment with that notification it must be run by Medical Practitioners and Specialists themselves. When the plaintiff was sought to be brought in under the notification of 1973 it was objected on the ground that they are having their own provident fund scheme. When that objection did not find favour, this suit was filed for an omnibus injunction against enforcement of the provisions of the Act, the Pension Fund Act and the Scheme thereof against the plaintiff, and also from taking any steps in connection thereto, even though the challenge was only against the notification of 1973 and the ground taken up was only that it is not a hospital within the meaning of the notification after 1968 since the in-patient department was stopped.

3. The Munsiff found the establishment to be a hospital coming within the notification and dismissed the suit. But in appeal the District Judge decreed the suit granting a permanent injunction restraining implementation of the Act and Scheme against the plaintiff. In doing so the District Judge adopted the restricted meaning of the word "hospital" given in Encyclopedia Britannica and said that in the absence of in-patient facility the establishment is not a hospital within the meaning of the notification of 1973. He also said that the establishment will not come under the notification of 1964 because it is not owned, controlled or managed by medical practitioners.

4. In construing the notification of 1964 the District Judge fell into the same error committed by the Regional Provident Fund Commissioner and thought that in order to constitute it as an establishment of medical practitioners and specialists, the ownership, management and control also must be by them and otherwise it cannot be such an establishment. Even when the two existing notifications are considered on the merits and found not applicable to the establishment in question, the injunction could only be against enforcement of the provisions of the Act and Scheme on the basis of those notifications alone and not otherwise. In order to make an establishment a hospital or a clinic, it is immaterial as to who owns, controls or manages it. What is material is only the operation and activities there. We are aware of hospitals, dispensaries, clinics and other establishments owned, controlled and managed by people not qualified in the medical field, but employing qualified men. In order to make it an establishment of medical practitioners and specialists it is not the ownership, control or management that counts. It is the business transacted there that is material. Otherwise the beneficent provision could be easily defeated by keeping ownership, management and control in somebody else.

5. Admittedly the plaintiff is an establishment contemplated in Section 1(3)(b).

Even if the two notifications are found insufficient to take the plaintiff, still the Central Government is having the right under the said provision, so long as the Act is in force, to issue further notifications undisputedly covering the plaintiff. The omnibus injunction granted by the District Judge is practically an inroad into the exercise of that right. It is an unauthorised judicial interference in the legislative and executive fields, thereby torpedoing the implementation of a social welfare legislation. Even without going into the merits the injunction as it is must fail.

6. On the other hand a liberal and practical interpretation of the two notifications could easily bring in the plaintiff. In interpreting a word in a statute which is not defined there or in the General Clauses Act, the nature of the legislation, the purpose sought to be achieved and the evils sought to be done away with will have to be considered. A perusal of the provisions show that irrespective of the nature of the business, the number of employees is the consideration. Giving social security to the employees in private concerns and enterprises is the object, whatever those concerns and enterprises are doing. The Schedule and the notifications issued so far show that almost all classes of establishments dealing with variety of business are brought within the purview of the Act, thereby indicating that the provisions are not intended to exonerate any venture on the ground of nature of business transacted. We have to bear in mind that it is beneficent piece of social welfare legislation aimed at promoting and securing the well-being of the employees. The court will not adopt a narrow interpretation which will have the effect of defeating the very object and purpose of the Act-see *Andhra University Vs. Regional Provident Fund Commissioner of Andhra Pradesh and Others*, The Act has been brought into force in order to provide for the institution of provident funds for the benefit of the employees in factories and establishments. Article 43 of the Constitution requires the State to endeavour to secure by suitable legislation or economic organisation or in any other way to all workers, agricultural, industrial or otherwise, among others, conditions of work ensuring a decent standard of life and full enjoyment of leisure. The provision of the provident fund scheme is intended to encourage the habit of thrift amongst the employees and to make available to them either at the time of their retirement or earlier, if necessary, substantial amounts for their use from out of the provident fund amount standing to their credit which is made up of the contributions paid by the employers as well as the employees concerned. The Act should, therefore, be construed to advance the object with which it is passed. Any construction which would facilitate evasion of the provisions of the Act should as far as possible be avoided (*Sayaji Mills Ltd. Vs. Regional Provident Fund Commissioner*, The two notifications and their applicability to the plaintiff will have to be considered in such a liberal manner even before considering the issue of a restricted injunction as against the two notifications.

7. Plaintiff is evidently an establishment of Medical Practitioners and Specialists coming within the notification of 1964 even if it is treated to be not a hospital coming within the notification of 1973. Exclusion of establishments of medical

practitioners and specialists from the notification of 1973 is immaterial because its inclusion as a hospital under it will not arise if it comes under the notification of 1964. More than 20 employees are there. The fact that the establishment is owned and managed by a company and not individually by medical practitioners and specialists is no concern. Two of the Doctors working there are Directors of the Company and one is a shareholder. Even if they are not so, it is immaterial and it will continue to be an establishment of medical practitioners and specialists. In spite of the earlier stand taken by the Commissioner, he is entitled to have a re-consideration for the purpose of enforcing the provision. But when an injunction is issued from court the position is different and it operates as a fetter against enforcement of the statutory right.

8. A clinic or a dispensary or a pharmacy or by whatever name it is called, an establishment of medical practitioners and specialists employing 20 or more persons could come within the ambit of the 1964 notification. The notification of 1973 was published only for the purpose of bringing in such other institutions which could successfully escape from the previous one. It may be for that purpose that the word "hospital" is used because hospitals are likely to be taken out of the purview of establishments of medical practitioners and specialists. A highly restricted and technical interpretation of the word "Hospital" in contrast with "Clinic" or "Dispensary" may give room for a narrow meaning as defined in the Encyclopedia Britannica Vol. II at page 791 that hospital is a place where sick and injured persons receive, medical care of such nature that some patients are required to utilise a bed during part or all of their stay while dispensary and clinic are for ambulatory patients who return to their homes after each visit. It is true that there is such a distinction between a "hospital" on the one side and a "clinic" or "dispensary" on the other in common understanding also. But generally hospital is the genus of which clinic and dispensaries are only species and the purpose of all is generally treatment of the sick. These subtle distinctions need be considered for differentiation only in cases where it is necessary. While interpreting an establishment for the purpose of the notification to decide the applicability of the provisions of the Act and Scheme the word "hospital" must receive a liberal interpretation. The notification uses the word "hospital" or "dispensary", but only as a medical establishment where patients receive treatment, whether it is termed "hospital", "dispensary" or "clinic". This is quite so because the primary object is the benefit to the employees and not to exclude an establishment on the ground that in-patients are not admitted. As held by the Supreme Court in *Scientific Engineering House (P) Ltd. Vs. Commissioner of Income Tax, Andhra Pradesh*, the question in such a situation is whether the establishment fulfils the function of a hospital in the sense of treating patients.

9. In *K.B. Jacob v. Regional Commr.* 1986 KLT 954 the distinction between "hospital" and clinic" was drawn in the context of deciding the dispute whether a regular hospital started in 1974 could be considered as continuation of a consulting clinic started by the Doctor by himself in one of the rooms of his residential house for examining patients in 1970. The distinction has taken the

colour only from the context and what was decided was only that the full-fledged hospital started in 1974 was a new one and not a continuation of the consulting clinic started at the residence in 1970.

10. The word "hospital" itself may have its origin from the words "hospitable" or "hospitality" which include giving or affording a general welcome and entertainment to guests or strangers received. It is not necessary that reception or entertainment must be for stay even though stay could also be contemplated. In the New Websters Dictionary of the English Language (Deluxe Encyclopedic Edition 1981), hospital is defined as an institution in which sick or injured persons are given medical, obstetric, psychiatric, or surgical treatment or nursing care. Corpus Juris Secundum Vol. 41 page 331 says that the word "hospital" is used in many sense and ordinarily a hospital is an institution for the reception and care of sick, wounded, infirm, or aged persons. In common usage "hospital" is said to be an institution maintained for providing a place to which persons may resort for medical or surgical treatment or is a place where medicine is practiced by physicians. According to the Random House Dictionary of the English Language also "hospital" includes an institution in which sick or injured persons are given medical or surgical treatment. Even Statement's Medical Dictionary mentioned "hospital" only as an institution for the care, cure and treatment of the sick and wounded, for the study of disease and for the training of physicians and nurses. Shorter Oxford Dictionary or Stroud's Judicial Dictionary have also not given anything different. From these definitions I was not able to conclude that facility for hospitalisation is a condition precedent to make an institution a hospital, even though in most of the hospitals that facility may also be there, I put it otherwise, absence of in-patient facility by itself will not deprive an institution of its otherwise status as a hospital. From the above meanings in standard dictionaries also it may not be out of place to give a general interpretation to the word "hospital" so as to include a treatment centre without in-patient facility for the purpose of such a legislation especially in view of the business transacted and facilities available in the plaintiff institution. Further the word is used in the notification not for the purpose of drawing the niceties of distinctions between hospitals and other establishments, but only demarcate an establishment employing 20 or more persons where medical care and treatment are imparted. Such care and treatment could be effectively imparted without in-patient wing as is done in the institution in question.

11. The two notifications read together will indicate that the object is to bring all medical establishments employing 20 or more persons, except those that are exempted, under the purview of the Act and Scheme for affording benefits to the employees, under whatever name they could be categorised. The exemption of establishments of medical practitioners and specialists from the definition of hospital in the notification of 1973 is not derogative of such an object. If it is a hospital coming under the notification of 1973 it need not be included in that of 1964 and vice versa. Either way it is an establishment coming under the Act and Scheme and the injunction cannot stand. The injunction as ordered cannot stand

for the further reason that it will affect the right of the Central Government u/s 1(3)(b),

12. The second appeal is allowed reversing the decree and judgment of the District Judge and restoring those of the Munisff dismissing the suit. However, in the circumstances, there will be no order as to costs.