

(1960) 07 MAD CK 0029
In the Madras High Court
Case No : Writ Petition No. 563 of 1959

Express Newspapers (Private) Ltd., Madras-2	APPELLANT
Vs	
Regional Provident Fund Commissioner III, Madras 6 and Another	RESPONDENT

Date of Decision : 29-07-1960

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 15,
15(2), 8
Madras City Land Revenue (Amendment) Act, 1867 — Section 4

Citation : AIR 1961 Mad 226 : (1961) 2 FLR 156 : (1961) 1 LLJ 610 : (1961) 1
MLJ 179

Hon'ble Judges : Rajagopalan, J

Bench : Single Bench

Advocate : V.P. Raman, for the Appellant; Addl. Govt. Pleader, for the
Respondent

Final Decision : Allowed

Judgement

Rajagopalan, J.—The petitioner company, which was formed in 1946, engaged itself in the newspaper industry and published newspapers including the Indian Express. It had a provident fund itself and its assets were entrusted to three trustees, including the Chairman of the company, and a representative of the employees. The Employees Provident Fund Act, 19 of 1952, came into force in 1952, but that Act did not then cover the employers and employees in the newspaper industry.

When the Working Journalists Conditions of Service Miscellaneous Provisions Act 45 of 1955 came into force towards the end of 1955, Section 15 of that Act extended the provisions of Act 19 of 1952 to newspaper establishments, of which the petitioner's was one. On 4-12-1956 a notification was issued under the provisions of Act 19 of 1952, applying the provisions of that Act to newspapers with effect from 31-12-1956, which in effect meant that the statutory scheme under Act 19 of 1952 applied thereafter to the petitioner among others engaged

in the newspaper industry.

2. The authorities informed the petitioner on 5-1-1957 that it was open to him to apply for exemption from the provisions of Act 19 of 1952 u/s 17(1) of that Act. On 4-2-1957 the petitioner applied for exemption. During the pendency of that application, on 22-2-1957, the respondent suggested certain amendments of the rules that governed the petitioner's provident fund scheme. Eventually on 29-9-1958, the exemption sought by the petitioner was refused.

3. Even before the provisions of Act 19 of 1952 (hereinafter referred to as the Act) were extended to the employer and employees in the petitioner's concern, and while the assets of the provident fund were vested in the trustees, the petitioner borrowed a sum of Rs. 9.5 lakhs from the Fund on a promissory note, and the petitioner effected an equitable mortgage as security for that loan by depositing title deeds of some of his Immovable properties at Madras and Bombay with the trustees.

During the pendency of the application preferred by the petitioner u/s 17 of the Act for exempting his concern from the operation of the provisions of the Act, the petitioner was informed on 6-12-1957 by the Central Commissioner that the petitioner should redeem the mortgage within one year. The petitioner was also subjected to the further condition, that steps should be taken to assign the mortgage immediately in favour of the Central Board of Trustees of the Employees Provident Fund. Apparently there was no immediate assignment of the mortgage; nor did the petitioner redeem the mortgage within the period of one year allowed to him.

4. On 29-9-1958, it will be remembered, the exemption sought by the petitioner was refused. The respondent informed the petitioner of this and called upon the petitioner to transfer to the respondent all the accumulations of the petitioner's provident fund within 30 days. On 20-11-1958 the trustees, one of whom was the Chairman of the petitioner company, Sri R.M. Goenka, transferred to the respondent, the Regional Commissioner, Government promissory notes of the face value of Rs. 3,19,200. The trustees also transferred to the Regional Commissioner the promissory note for Rs. 9,50,000, executed by the petitioner, and along with it the title deeds to evidence the equitable mortgage were also handed over. These were accepted on behalf of the Regional Commissioner on 21-11-1958.

5. On 29-4-1959, the respondent informed the petitioner that a sum of Rs. 9,29,913.68 was still due from him, and the respondent required the petitioner to pay up that amount before 15-5-1959. It should be noted that after 29-9-1958 the petitioner was required from time to time to make certain payments, which were all taken into account in arriving at the figure mentioned in the letter dated 29-4-1959.

The amount demanded on 29-4-1959 Rs. 9,29,913.68 was really part of the debt due from the petitioner for which there was security of the equitable mortgage

effected by deposit of title deeds. In the letter dated 12-5-1959, which the petitioner sent in response to this demand the petitioner pointed out that all the assets had already been transferred, including the mortgage debt, and that the transfer had been accepted by the authorities.

The petitioner stated that in accordance with the arrangement between the petitioner and the authorities the petitioner had been making payments from time to time which were really in part payment of the mortgage loan of Rs. 9,50,000, and the petitioner said:

"We shall however continue to make payments in accordance with our arrangements as and when amounts become payable to the employees who are no longer in our service, as we have been doing hither-tofore".

The petitioner regretted his inability to comply with the demand for the immediate payment of the entire amount due under the loan of Rs. 9,29,913-63;

6. On 15-5-1959 the second respondent, the Collector of Madras, issued a notice to the petitioner under S. 4 of the Madras City Land Revenue Amendment Act, 6 of 1867, demanding the payment of the sum of Rs. 9,29,913-68. Section 8 of Act 19 of 1952, to which I shall refer in greater detail later, authorised recoveries of the dues specified in that section as if they were arrears of land revenue;

7. The first respondent, the Regional Commissioner, sent the letter dated 16-5-1959 in reply to the petitioner's letter dated 12-5-1959. In that letter the Regional Commissioner referred to the assignment of the mortgage debt -- obviously the assignment effected by the trustees of the fund -- and stated :

"These properties have been accepted as security only as an interim measure during the period of one year of extension of time granted to you."

After pointing out that that period of one year had expired, the Regional Commissioner demanded the immediate payment of outstanding arrears.

8. The petitioner applied under Article 226 of the Constitution for the issue of a writ of mandamus to restrain the respondents, the Regional Commissioner and the Collector, from taking any further proceedings against the petitioner u/s 8 of Act 19 of 1952 and also, of course, proceedings under the Revenue Recovery Act 6 of 1907.

9. The relevant statutory provisions of the Act (Act 19 of 1952) are Section 8(a) and Section 15(2). The relevant portion of Section 8(a) provides :

"Any amount due -- (a) from the employer in relation to an establishment to which any scheme applies in respect of accumulations required to be transferred under Sub-section (2) of Section 15 may, if the amount is in arrear, be recovered by the appropriate Government in the same manner as an arrear of land revenue."

Section 8 by itself, it should be obvious, does not impose the liability to pay. It

only subjects the employer who is liable to pay, that is, liable to transfer the accumulations", to the provisions of the Revenue Recovery Act for example: whatever is lawfully due from the employer under this head, if it remains unpaid and is in arrear, can be recovered in the same manner as an arrear of land revenue. That the provisions of Act 6 of 1867 applied to recovery of land revenue payable by a person resident in the city of Madras did not admit of any doubt. Tho liability itself, to enforce which recourse could be had to the provisions of the Revenue Recovery Act, was this one declared by Section 15(2) of the Act. Section 15(2) provides ;

"On the application of any Scheme to an establishment, the accumulations in, any provident fund of the establishment standing to the credit of the employees who become members of the Fund established under the Scheme shall notwithstanding anything to the contrary contained in any law for the time being in force or in, any or other instrument establishing the provident fund but subject to the provisions, if any, contained in the scheme, be transferred to the Fund established under the Scheme, and shall be credited to the accounts of the employees entitled thereto in the fund."

Section 15(2) creates the liability to transfer the fund. But Section 15(2) itself does not specify whose is the liability to effect that transfer. Section 15(2), however, in express terms subjects the liability it creates to the provisions contained in the Scheme. the Scheme referred to therein is the Scheme for which Section 5 of the Act provides. Paragraph 28 of the Scheme directed.

"Every authority in charge of, or entrusted with the management of, any provident fund in existence on the 15th day of November 1951, the accumulations wherein are to be transferred to the Fund under Sub-section (2) of Section 15 of the Act, shall, before the 1st day of January 1953, or such later date as the Board may fix in this behalf.....

(ii) transfer to the Fund in the manner specified in sub-paragraph (2) the total accumulations standing to the credit of the subscribers in relation to each factory

(2) All accumulations standing to the credit (5) the subscribers, however invested, shall be transferred to the "Fund by the authority aforesaid in cash;".

The rest of para 28 I snail omit as it is not material for our present purposes.

10. When the Scheme under the Act became applicable to the petitioner's concern, the liability imposed by Section 15(2) of the Act arose. The liability to transfer the assets of the provident fund of the petitioner's concern to the Fund was under the Act and the Scheme. Paragraph 28 laid that liability to transfer on every authority in charge of or entrusted with the management of the petitioner's provident fund. I have already pointed out that the petitioner company itself was not in possession of the assets, because the assets of the provident fund were vested in the trustees.

It is the trustees that constituted the authority to charge of the provident fund, or the authority entrusted with the management of the fund within the meaning of paragraph 28. The petitioner, no doubt, was the employer. But on the relevant date, 15th November 1951, the petitioner himself was not in charge of the fund, nor was he entrusted with the management of the fund. The charge and management had already been vested in the trustees, in whom also, as I have pointed out, the assets vested.

11. The main contention of the learned counsel for the petitioner was that the petitioner, who was admittedly the employer, was not the person on whom there rested any statutory liability to transfer the assets of the petitioner's provident fund to the fund established under the scheme. The combined effect of Section 15(2) and paragraph 28 of the scheme was to cast that liability, in the circumstances of the case, not on the petitioner employer but on the trustees. Therefore the requirements of Section 3(a), which applied no doubt to an employer, were not satisfied, because the petitioner as employer could not have been lawfully required in this case to transfer the assets to the authorities in charge of the fund established under the scheme.

12. This plea was developed for the first time when the petitions came on for hearing before me, and it was subsequently formulated in the supplemental affidavit filed by the petitioner on 11-7-1960. As the learned Government Pleader pointed out, at no earlier stage did the petitioner put forward the plea, that whether or not the trustees were liable to transfer the assets in cash, the petitioner himself was under no such liability, because no liability was cast upon him by paragraph 28 of the scheme.

That was not the defence the petitioner put forward. In the correspondence that preceded the issue of the demand notice dated 15-5-1959. It was not even disclosed in the original affidavit filed in support of the petition on the basis of which a rule nisi was obtained. The plea, as I said, was specifically disclosed only in the supplemental affidavit dated 11-7-1960.

13. The relevant facts thus were not in dispute. The petitioner constituted a provident fund for his employees long before the Act. Act 19 of 1952, was applied to the employer and employees in the petitioner's newspaper concern. The assets of that provident fund however were vested not in the petitioner, but in the trustees. That too was long antecedent to the relevant date prescribed by paragraph 28 of the scheme. After the Act and the scheme framed thereunder were extended to the petitioner's concern, there was a transfer of assets by the trustees, who were in charge of these assets, to the authority constituted under the scheme.

On 20-11-1958, as I have pointed out, there was a transfer of the assets, which consisted of Government promissory notes, the promissory note for Rs. 9,50,000, and the security for the promissory note debt effected by the equitable mortgage by deposit of title deeds of the petitioner's properties. That transfer

was accepted on 25-11-1958 by or on behalf of the first respondent.

No doubt, under paragraph 28(2), the liability was to transfer all accumulations howsoever invested in cash. There was no controversy about the transfer of the Government promissory notes. One of the assets transferred by the trustees, that is, one of the "investments" was the promissory note debt, for which there was the security of equitable mortgage. The Commissioner appointed under the Scheme could very well have insisted at that stage on the trustees discharging the statutory liability imposed by paragraph 28(2) of the Scheme, which in effect was that the trustees should realise the investment, that is, the loan and pay it in cash to the Commissioner in charge of the fund established under the Scheme.

That, however, was not done at that stage. Whether the trustees could still be required to realise the transferred asset and pay it in cash, does not arise for consideration at this stage. The trustees as such are not parties to these proceedings. The question for determination is, was the petitioner as an employer under any liability to pay in cash, that is, whether the petitioner was under any liability to transfer any asset in cash. That question has to be answered only with reference to the terms of paragraph 28 of the Scheme, and the answer has to be in the negative and in favour of the petitioner,

He was not, as I have pointed out, the authority in charge, or the authority entrusted with the management of the provident fund, the provident I fund, established by the employer. If Section 15(2) read with paragraph 28 of the I scheme did not impose any liability on the petitioner as an employer to transfer the assets of the provident fund established by him, then obviously the requirements of Section 8(a) cannot be held satisfied, and if those requirements are not satisfied, nothing can be recovered from the employer as arrear of land revenue. . If that be the position, the notice of demand issued by the Collector on 15-5-1959 will have to be set aside as one issued without jurisdiction.

14. The learned Additional Government Pleader contended that the effect of clause 28 was not to dispense with what he called the ultimate liability of the employer to transfer the assets of his provident fund to the authority in charge of the fund established under the scheme. I am unable to see any scope for differentiating between an immediate liability and an ultimate liability, or primary liability and ultimate liability with reference to the circumstances of this case.

Paragraph 28 categorically lays the liability not on the employer as such but only on the person or persons in charge of the provident fund or entrusted with the management of the provident fund. Once again I have to point out that the petitioner, though he was the employer, was not in charge of the provident fund, nor was he entrusted with the management of that provident fund. That applied only to the trustees. I am unable to see anything in paragraph 28 or in Section 15(2) read with paragraph 28 to impose a liability on an employer, if he was not the authority in charge of the provident fund or if he was not the authority entrusted with the management of the provident fund.

In other words, where an employer had divested himself lawfully of the charge of the provident fund and of the management of the provident fund and had lawfully vested the assets of the provident fund, the charge of the provident fund and the management of the provident fund in trustees lawfully constituted, the employer is no longer under the liability created by Section 15(2) of the Act read, with sub-paragraphs (1) and (2) of paragraph 28 of the scheme,

15. The learned Additional Government Pleader pointed out that the primary object of the Act and the scheme thereunder was that the assets of the employer's provident fund should be transferred in cash to the fund established under the scheme, and if there was default, that liability could be enforced u/s 8 of the Act. The further plea was that, since Section 8 was limited only to employers, the object of the Act would be frustrated if Section 15(2) read with paragraph 28 of the scheme were construed to absolve the employer in this case of any liability to effect the required transfer, that is, the transfer in cash. Section 8 of the Act, it should be remembered, is not the only remedy open in law to the first respondent.

Even if the employer were liable to transfer the assets of his provident fund to the fund established under the scheme, Section 8 is not the exclusive remedy. In other words, the liability could be enforced by other means also besides recourse to the relevant provisions of the Revenue Recovery Act. One thing however seems to be to be clear. Section 8 cannot be invoked to enforce a liability of any one other than an employer.

If, as I have held, the liability to transfer the assets of the petitioner's provident fund was that of the trustees, the liability of the trustees will not fall within the scope of Section 8 of the Act. How that liability is to be enforced in law I am not called upon to decide in this case. Before Section 8 can be applied to the petitioner, there must be proof that he was under a legal liability to transfer the assets, and I have held that in the present case the petitioner was under no such legal liability.

16. The learned Additional Government Pleader contended that, since it was a belated plea that the petitioner put forward, the validity of that plea should not be examined at all, and that the rule nisi should be discharged in the exercise of my discretion. I am unable to accept this argument. The statutory authorities in this case, the first respondent and the second respondent, the first claiming statutory powers under Act 19 of 1952, and the second claiming statutory powers under Act 6 of 1867, invoked with reference to Section 8 of Act 19 of 1952, could act only within the limits of their statutory powers. The limits in this case were defined by Section 8. If the petitioner himself was under no Statutory liability, the liability created by Act 19 of 1952, to pay anything, there can be no question of that liability being enforced u/s 8.

Obviously the liability of the petitioner as a debtor under a mortgage debt is not a liability which could be enforced by recourse to the provisions of Section 8, that

is, the balance of the mortgage debt due from the petitioner cannot be recovered as if it were an arrear of land revenue u/s 8 of the Act. When neither of the statutory authorities, respondents 1 and 2, had any jurisdiction to demand of the petitioner that he should transfer the assets of which he is not in charge as assets, the second respondent had no jurisdiction to issue the demand notice dated 15-5-1959, under the provisions of Section 4 of Act 6 of 1867.

17. The rule nisi is confirmed and a writ of mandamus will issue as prayed for directing the respondents to forbear from applying the provisions of Section 8 of Act 19 of 1952 and the provisions of Act 6 of 1867, to recover the amount demanded of the petitioner. There will be no order as to costs.