(2009) 04 MAD CK 0080

In the Madras High Court

Case No : W.A. No. 1155 of 2007 and M.P. No. 1 of 2007

Gowri Shankar Theatre APPELLANT

Vs

The Assistant Provident Fund Commissioner, Employee' Provident Fund Organization and The Enforcement Officer, Employees' Provident Fund Organisation RESPONDENT

Date of Decision : 20-04-2009

Acts Referred:

Cine-Workers and Cinema Theatre Workers (Regulation of Employment) Act, 1981 — Section 24
Constitution of India, 1950 — Article 134A
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 1(3), 1(5), 7A

Citation : (2009) 3 CTC 712 : (2010) 1 LLJ 92

Hon'ble Judges : P. Jyothimani, J;Aruna Jagadeesan, J

Bench : Division Bench

Advocate : K. Umar, for the Appellant; K. Ramu, for R1 and R2, for the Respondent

Judgement

P. Jyothimani, J.—The writ petition is filed against the order of the learned single Judge dated 24.07.2007 in W.P. No. 21503/2007 by

which the learned single Judge while dismissing the writ petition has held that the petitioner theatre would continue to be bound by Employees''

Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952).

2. The case of the appellant/writ petitioner is that the appellant has been running a theatre in Vaniyambadi and the number of employees employed

in the said theatre was only 4. By mistake the appellant writ petitioner has been making contribution towards Employees'' Provident Fund. By

order dated 18.4.2007 passed by the second respondent which is impugned in the writ petition, the second respondent has directed the contribution by the appellant saying that when originally the contribution was made under the Employees'' Provident Funds and Miscellaneous

Provisions Act, 1952 (19 of 1952) even if the number of employees has fallen below, the appellant theatre is bound to contribute under the

Employees'' Provident Funds and Miscellaneous Provisions Act, 1952.

3. The learned Counsel appearing for the appellant would vehemently contend that inasmuch as the appellant writ petitioner is bound by the

provisions of the Cine Workers and Cinema Theatre Workers (Regulation of Employment) Act, 1981 (50 of 1981) which contemplates an

obligation on the part of the employer to make contribution under the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (19 of

1952) only if the number of workmen employed is 5 or more and if the petitioner by mistake has contributed payment of Employees'' Provident

Fund, that would not be taken as a contribution under the Employees'' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952) and

his submission is when the number of workers has come down to 4, necessarily the Employees'' Provident Funds and Miscellaneous Provisions

Act, 1952 (19 of 1952) should not be made applicable. He would further contend that Section 1(5) of the Employees'' Provident Funds and

Miscellaneous Provisions Act, 1952 (19 of 1952) which contemplates that when an establishment was originally covered under the Employees''

Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952) and subsequently if the number of persons comes down below 20,

nevertheless the Employees'' Provident Funds and Miscellaneous Provisions Act, 1952(19 of 1952) would continue to apply and that provision is

not applicable to the facts of the present case. The Cine Workers and Cinema Theatre Workers (Regulation of Employment) Act, 1981 (50 of

1981) has not contained such clause. Therefore, according to him, the decision of the learned single Judge dismissing the writ petition and thereby

making an obligation on the appellant writ petitioner to continue to contribute under the Employees'' Provident Funds and Miscellaneous Provisions

Act, 1952 (19 of 1952) is not sustainable in law.

4. On the other hand, Mr. K. Ramu, learned Counsel appearing for the respondents would bring to the notice of this Court that u/s 1(3) of the

Employees'' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of

1952)it is open to the Central Government by notification in the

Official Gazette to apply the provisions of the Employees'' Provident Fund and Miscellaneous Provisions Act, 1952 to any establishment and make

them to contribute E.P.F. even in cases where less than 20 employees are employed and therefore the Cine Workers and Cinema Theatre

Workers (Regulation of Employment) Act, 1981 (50 of 1981) which is deemed to be a notification, since it is a statutory provision, enables the

authorities to impose the obligation of payment of contribution in cases where 5 or more persons are employed in theatre. By harmoniously

construing it means that the E.P.F. Act applies even if the number of employees is five. If it comes down below 5, then Section 1(5) of the

Employees'' Provident Fund and Miscellaneous Provisions Act, 1952 has to be applied.

5. We see great force in the submission made by the learned Counsel for the respondents. Under the Cine Workers and Cinema Theatre Workers

(Regulation of Employment) Act, 1981 (50 of 1981) which is applicable to the petitioner''s case, Section 24 of the said Act makes it clear that the

provisions of the Employees'' Provident fund and Miscellaneous Provisions Act (19 of 1952) is applicable to every Cinema Theatres covered

under the Cine Workers and Cinema Theatre Workers (Regulation of Employment) Act, 1981 (50 of 1981). Section 24 of the Cine Workers and

Cinema Theatre Workers (Regulation of Employment) Act, 1981 is extracted hereunder:

The provisions of the Employees'' Provident Fund and Miscellaneous Provisions Act, 1952, as in force for the time being, shall apply to every

cinema theatre in which five or more workers are employed on any day, as if such cinema theatre were an establishment to which the aforesaid Act

had been applied by a notification of the Central Government under the proviso to Sub-section (3) of Section 1 thereof, and as if each such

worker were an employee within the meaning of that Act.

On the facts of the case, it is not in dispute that at the time when the writ petitioner has been making contribution under the Employees'' Provident

Fund and Miscellaneous Provisions Act, 1952, the number of employees was more than 5. The grievance of the appellant is that the theatre was

closed for some time and thereafter, it was reopened with four new employees and therefore, there is reconstitution and in such view of the matter

the question of applicability of Section 24 does not arise. A reference to the pleadings made in the affidavit filed in support of the writ petition it is

stated that due to financial disability the theatre was closed and thereafter it was re-opened and at the time of reopening, there were only four

employees. It is not the case of the writ petitioner in the affidavit filed in support of the writ petition as if the establishment was closed and thereafter

it was reconstituted with new four employees, even though that is the submission made by the learned Counsel now before this Court. In any event,

whether there was a closure of the theatre and reopening of the same with the new employees is an immaterial fact. What is required is that the

theatre which is run by the writ petitioner which has in fact made contribution under the Employees Provident Funds and Miscellaneous Provisions

Act, 1952 (19 of 1952)in respect of its workers as per Section 24 of the Cine Workers and Cinema Theatre Workers (Regulation of

Employment) Act, 1981 (50 of 1981). u/s 1(3)(b) of the Employees'' Provident Fund and Miscellaneous Provisions Act, 1952 which is as

extracted hereunder,

(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 the Central Government may, after giving not less than two months'' notice or 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.

enables the Central Government by notification in the Official Gazette to extend the applicability of the Employees'' Provident Fund and

Miscellaneous Provisions Act, 1952, to any other establishment wherein the number of employees are less than 20. The provision is made in order

to bring within the purview of the Employees'' Provident Fund and Miscellaneous Provisions Act, 1952 even the establishments wherein less than

20 numbers are employed as workers. The Cine Workers and Cinema Theatre Workers (Regulation of Employment) Act, 1981 (50 of 1981) in

respect of the Cinema Workers makes it clear that in respect of the Cinema

Theatres, the Employees'' Provident Fund and Miscellaneous

Provisions Act 1952 is applicable in cases where number of employees are 5 or more and therefore, the enactment should be taken as a

notification as per the provisions of Section 1(3)(b) to the Employees'' Provident Fund and Miscellaneous Provisions Act, 1952. As per Section

1(5) of the Employees'' Provident Fund and Miscellaneous Provisions Act, 1952 which is extracted hereunder

(5) An establishment to which this Act applies shall continue to be governed by this Act notwithstanding that the number of persons employed

therein at any time falls below twenty.

when once an establishment is covered under the Employees'' Provident Fund and Miscellaneous Provisions Act, 1952, merely because the

number of employees has come down, that will not take away the applicability of that Act. The contention of the learned Counsel for the appellant

that Section 1(5) of the Employees'' Provident Fund and Miscellaneous Provisions Act, 1952 speaks only 20, but as far as the appellant''s case is

concerned, the number of employees which was 5, came down to 4 and therefore Section 1(5) of the Employees'' Provident Fund and

Miscellaneous Provisions Act, 1952 cannot apply, has no meaning. When once the applicability of the Employees'' Provident Fund and

Miscellaneous Provisions Act, 1952 has been extended to Cine Workers as per Section 24 of the Cine Workers and Cinema Theatre

Workers''(Regulation and Employment) Act 1981, necessarily all provisions of the Employees Provident Funds and Miscellaneous Provisions Act,

1952 are to be applied by harmonious construction of Section 1(5) of the Act in respect of Cine Theatre. Therefore, it should be taken as 5

instead of 20 since under the Cine Workers and Cinema Theatre Workers''(Regulation and Employment) Act 1981, the minimum requirement is 5.

In this view of the matter, there is no difficulty to come to the conclusion that Section 1(5) of the Employees Provident Fund and Miscellaneous

Provisions Act, 1952 is applicable to the appellant''s establishment.

6. The further submission made by the learned Counsel is that u/s 7A of the Employees'' Provident Funds and Miscellaneous Provisions Act,

1952, while determining the amounts due from the employer, there is a duty on the part of the authority under this Act to decide about the applicability of the provision. A reading of Section 7A makes it clear that the said provision applies only when dispute is raised with regard to the

applicability of the Act. On the pleading which has been made by way of affidavit filed in support of the writ petition, we see that there is no

dispute raised by the petitioner at all. The petitioner by his communication to the E.P.F. authorities has informed that the theatre was closed and

reopened and therefore the Act is not applicable. That cannot be the dispute u/s 7A of the Act. Further a reference to the circular issued by the

Commercial Tax Officer makes it clear that the theatre was closed for the period from 5.7.2004 to on 13.4.2005 and subsequently it has been

reopened. In such view of the matter, we do not see any reason to interfere with the order impugned.

7. Therefore, the Writ Appeal fails and the same is dismissed. No costs. Consequently, M.P. No. 1 is also dismissed.

8. The apprehension of the learned Counsel for the appellant is that the respondents may impose the obligation on them for payment of contribution

for employees for the period of closure from 5.7.2004 to 13.4.2005.

9. Mr. Ramu, learned Counsel appearing for the respondents would submit even as per the impugned order, the obligation to contribute the E.P.F.

contribution as employer arose after the theatre was reopened.

10. The apprehension is not based on sound principle. In such view of the matter that the respondents shall consider the case of the appellant not

to impose the obligation to contribute during the period of closure in accordance with law.

11. The learned Counsel for the appellant seeks permission under Article 134A of the Constitution seeking leave to file appeal to Supreme Court.

We do not see any substantial question of law involved in this case. Therefore, leave rejected.