

(1955) 10 MAD CK 0018
In the Madras High Court

Joseph Benjamin Bonjour (Insolvent)

APPELLANT

Vs

The Official Assignee of Madras

RESPONDENT

Date of Decision : 21-10-1955

Acts Referred:

Citation : AIR 1956 Mad 283 : (1956) ILR (Mad) 491 : (1956) 69 LW 105 :
(1956) 1 MLJ 166

Hon'ble Judges : P.V. Rajamannar, C.J

Bench : Division Bench

Judgement

P.V. Rajamannar, C.J.—This Full Bench has been constituted at the instance of Ramaswami Gounder, J., who considered that there should be an authoritative expression of opinion on the question whether a compulsory deposit when it is paid over to the subscriber or depositor, loses its character and becomes liable to attachment or vests in the Official Assignee or the Receiver in Insolvency on the subscriber or depositor being adjudged an insolvent, or, whether the immunity u/s 3(1) of the Provident Funds Act, 1925, continues to attach itself to such monies even after they are paid into the hands of the subscriber or depositor. It is difficult to understand how any question can arise of an attachment of money in the hands of the debtor, himself. There is no such attachment in this case. We shall therefore confine the scope of this reference to the latter part of the question, namely, whether the immunity u/s 3(1) of the Act continues to attach itself to moneys paid into the hands of the subscriber or depositor. On this question there is a direct decision of a Division Bench of this Court in Ranganayaki Ammal v. The Official Assignee of Madras (1930) 61 M.L.J. 354, which affirmed the decision of a single learned Judge in In Re: M. Venkataratnam Naidu, , according to which the question has to be answered in the negative. Ramaswami Gounder, J., however, thought "though with considerable reluctance," that this decision required reconsideration. Section 3(1) and (2) of the Provident Funds Act run as follows:

3(1). A compulsory deposit in any Government or Railway Provident Fund shall

not in any way be capable of being assigned or charged and shall not be liable to attachment under any decree or order of any Civil, Revenue or Criminal Court in respect of any debt or liability incurred by the subscriber or depositor, and neither the Official Assignee nor any Receiver appointed under the Provincial Insolvency Act, 1920 (V of 1920), shall be entitled to, or have any claim on, any such compulsory deposit.

(2) Any sum standing to the credit of any subscriber to, or depositor in, any such Fund at the time of his decease and payable under the rules of the Fund to any dependant of the subscriber or depositor, or to such person as may be authorised by law to receive payment on his behalf, shall, subject to any deduction authorised by this Act and, save where the dependant is the widow or child of the subscriber or depositor subject also to the rights of an assignee under an assignment made before the commencement of this Act, vest in the dependant, and shall, subject as aforesaid, be free from any debt or other liability incurred by the deceased or incurred by the dependant before the death of the subscriber or depositor.

The definition of "compulsory deposit" in Clause (a) of Section 2 of the Act is as follows:

"Compulsory deposit" means a subscription to, or deposit in, a Provident Fund which, under the rules of the Fund, is not, until the happening of some specified contingency, repayable on demand otherwise than for the purpose of the payment of premia in respect of a policy of life insurance or the payment of subscriptions or premia in respect of a family pension fund, and includes any contribution and any interest or increment which has accrued under the rules of the Fund on any such subscription, deposit or contribution, and also any such subscription, deposit contribution, interest or increment remaining to the credit of the subscriber or depositor after the happening of any such contingency.

The short question is whether the protection afforded by Section 3(1) of the Act will continue even after the money in such compulsory deposit has been paid over to the subscriber or depositor on the happening of any contingency which entitles the subscriber or depositor to draw out the money. In our opinion, there can be only one answer to the question, namely, that it will not, and for the simple reason that money thus paid over can no longer be described as a compulsory deposit. Money belonging to one can be said to be in deposit only with another person or authority. It can never be "a deposit" in the hands of the very person to whom the money belongs. Indeed but for observations in one early Bombay case, *Nagindas Bhukhandas v. Ghelabhai Gulabdas* ILR (1919) Bom. 673, there is unanimity of opinion on this question in all the High Courts.

2. In *In Re: M. Venkataratnam Naidu*, it was held by Waller, J., that Section 3(1) of the Provident Funds Act was intended to protect compulsory deposits only so long as they remained deposited in the fund. The learned Judge referred to the difference in the two provisions contained in sub-sections (1) and (2) of Section

3 and said:

I could understand the Act providing for the depositor taking his deposit free of all debts incurred by him while he was in the company's service. Such a provision is made in Sub-section (2) of Section 3, where in the case of a deceased depositor, his dependant takes the sum free of all debts contracted either by the depositor or by the dependant before the depositor's death, no such provision is made in Sub-section (1)....

The appeal against this decision of Waller, J., was heard and disposed of by a Division Bench consisting of Ramesam and Cornish, JJ., in *Ranganayaki Ammal v. The Official Assignee of Madras* (1930) 61 M.L.J. 354. The learned Judges confirmed the decision. Both Waller, J., and the learned Judges on appeal expressly dissented from the observations in *Nagindas Bhukhandas v. Ghelabhai Gulabdas* ILR (1919) Bom. 673, to the contrary. In that case an employee of a railway company was adjudged an insolvent and a receiver was appointed; subsequently he resigned his appointment and drew his provident fund from the railway company. A large portion of the amount so drawn was paid by him to his wife. He was convicted by the District Judge u/s 43(2) of the Provincial Insolvency Act of 1907 of the offence of making a fraudulent transfer and sentenced to three months' imprisonment. The insolvent appealed to the High Court against this conviction. The learned Judges set aside the conviction. They held that neither the Receiver nor the creditors had any claim to the money from the provident fund drawn by the insolvent. The material part of Section 4 of the provident funds Act, 1897, which was then in force ran thus:

Neither the Official Assignee nor a Receiver appointed under Chapter XX of the CPC shall be entitled to, or have any claim on any such compulsory deposit.

The definition of "compulsory deposit" in that Act was:

a subscription or deposit which is not repayable on the demand or at the option of the subscriber or depositor, and includes any contribution which may have been credited in respect of and any interest or increment which may have accrued on such subscription or deposit under the rules of the Fund.

Crump, J., said:

The question is whether the learned District Judge is right in holding that the protection afforded by the section ceases when the money comes into the hands of the depositor. In my opinion that is too restricted a construction. The words used are very wide. No Receiver has any claim on such compulsory deposits. If that is so how can he claim to receive the money when it is paid into the hands of the depositor?

He thought that the decision in *The Official Assignee of Madras v. Mary Dalgairns* ILR (1902) Mad. 440 supported his view. The learned Judges concluded by saying that even if the law were otherwise, the point was surrounded with so much doubt that the insolvent might well have entertained a bona fide belief that

the amount in question was entirely at his disposal, and therefore he was not guilty of a fraudulent act. Ramesam, J., in *Ranganayaki Ammal v. The Official Assignee of Madras* (1930) 61 M.L.J. 354, above mentioned, pointed out that the decision in *Official Assignee of Madras v. Mary Dalgairns* ILR (1902) Mad. 440, did not support the reasoning of the learned Judges of the Bombay High Court. In that case the provident fund money was never paid into the hands of the subscriber. Ramesam, J., also remarked that the Bombay decision could be supported on the other ground, namely, that the insolvent might bona fide have believed that the money was at his absolute disposal and not subject to the claims of the Receiver in insolvency and therefore was not guilty of a fraudulent transfer. In the Bombay High Court itself it was held by Rangnagar and Divatia, JJ., in *Walchand Molaji v. Charles. A. Williams* ILR (1935) Bom. 517, that a sum standing to the credit of a subscriber under the Provident Funds Act when received by him before his death vested in the Receiver in his insolvency.

3. No case has been cited to us in which the decision in *Nagindas Bhukhandas v. Ghelabhai Gulabdas* ILR (1919) Bom. 673, has been followed. In every reported case in which reference was made to that decision, learned Judges have expressed their dissent from the view taken therein. In *Devi Prasad v. The Secretary of State for India in Council* ILR (1923) All. 554 Daniels, J., said that the decision went too far. In *Gauri Shankar v. R.J. De Cruze* ILR (1925) Luck. 313 the decision was expressly dissented from (vide also *Mrs. A.T. Marten v. R.K. Dutt* ILR 1939 Nag. 530. The view that the Immunity u/s 3(1) of the Provident Funds Act, 1925, lasts only so long as the amount remains as a compulsory deposit and ceases the moment it is paid over to the subscriber or depositor has been expressed in other cases as well—vide *Central Bank of India, Ltd. v. M.V.V. Rao* ILR (1945) 1 Cal. 277; *Rukmini Kumar v. A.B. Loan Co.* (1936) 40 C.W.N. 1406 and also *Baramdeo Pandev v. Fay Smith* (1939) 44 C.W.N. 637. In *Raja Krityanand Singh Bahadur v. Saileswar Sen* ILR (1936) Pat. 779, the question was left open. We may however say that we do not agree with the learned Judges that there is any conflict between the decision in *In Re: M. Venkataratnam Naidu*, and the decision in *Hindlay v. Joy Narain* (1919) ILR 46 Cal. 962.

4. Reference can usefully be made to two decisions which relate to provisions similar to Section 3 of the Provident Funds Act. *The Official Assignee of Madras Vs. E.V. D'Silva*, deals with Sections 52 and 60 of the Presidency Towns Insolvency Act. It was held by Leach, C.J., and Chandrasekhara Aiyar, J., that the salary received by a public servant, though it be below Rs. 100 per mensem, becomes his property when paid over to him and falls within Section 52 and it would be open in law to the Official Assignee to apply after the salary has been received for an order directing a portion of it to be paid over to him for the benefit of the creditors. In *The Official Assignee Vs. C. Manickavelu Mudaliar*, it was held by Chandrasekhara Aiyar, J., that money paid over to an insolvent as commuted pension would vest in the Official Assignee. The learned Judge referred to the decisions in *Ranganayaki Ammal v. The Official Assignee of Madras* (1930) 61 M.L.J. 354 and *Walchand Molaji v. Charles A. Williams* ILR

(1935) Bom. 517, which deal with the provisions of the Provident Funds Act. (See also the decision of Somayya, J. in Gnanasiromani Nadar v. Nedungadi Bank (1944) 1 M.L.J. 45.

5. Darling, J., observed in Jones & Co. v. Coventry L.R. (1909) K.B. 1029,

In my opinion pension, when it has been paid to the person entitled to receive it, ceases any longer to be pension,... it becomes part of the pensioner's ordinary money.

6. It will thus be seen that except for the observations in Nagindas Bhukhandas v. Ghelabhai Gulabdas ILR (1919) Bom. 673. 15th July, 1955., which have been uniformly dissented from in subsequent cases including a case in the Bombay High Court, the consensus of judicial opinion is the same as that expressed in Ranganayaki Ammal v. The Official Assignee of Madras (1930) 61 M.L.J. 354 In our opinion there is no ground for reconsidering that decision. The answer to the question referred is that the immunity u/s 3(1) of the Act does not attach to moneys paid over to a subscriber or depositor from his Provident Fund.