(1997) 01 KAR CK 0070

In the Karnataka High Court

Case No : Writ Petition No. 17809 of 1993

Karnataka Handloom Development Corporation Ltd., Bangalore — APPELLANT

Vs

Regional Provident Fund Commissioner, Karnataka, Bangalore — RESPONDENT

Date of Decision : 21-01-1997

Acts Referred:
Employees Provident Fund and Miscellaneous Provisions Act, 1952 — Section 7 A

Citation : (1997) 3 KarLJ 262 : (1999) 1 LLJ 557

Hon'ble Judges : S. Rajendra Babu, J;B.S. Sreenivasa Rao, J

Bench : Division Bench

Judgement

S. Rajendra Babu, J.—This petition stands referred to a Division Bench u/s 9 of the Karnataka High Court Act, 1961 (for short ''the Act'').

2. The petitioner is a Corporation engaged in the promotion, growth and development of handloom industry as one of its activities. It claims that it extends organisational support to weavers, who are outside the co-operative fold and to prevent exploitation of such unorganised weavers at the hands of Master Weavers. The Corporation also provides financial assistance to the handloom industry and is engaged in allied incidental activities. It is stated that in order to achieve the main objectives of the Corporation several schemes have been formulated and under their scheme the weavers are provided with 100% raw material and marketing assistance besides infrastructural facilities to enable them to carry on weaving activity uninterruptedly and they are paid remunerative charges for the products woven by them. The Corporation provides facilities to weave at their dwelling places thereby providing employment opportunities at the village level and avoiding migration to the towns and cities in search of employment. The Corporation has set up 19 silk production centres throughout the State, 113 cotton and polyester production centres, apart from 6 woolen production centres. The production activities of the Corporation cover all the Districts in the State except Kodagu. The Corporation has also established 12

dyeing houses in various centres in the State. It has also established a chain of retail outlets inside and outside the State. Large number of weavers possess basic skill of weaving wide varieties of fabrics including silk, polyester, casement and so on. The Corporation assists them to equip themselves with better techniques to diversify their production with ultimate objective of improving their earning capacities. The professional weavers are given advanced training. The Corporation also provides assistance under the Integrated Handloom Development Projects, Export-oriented Projects and Centrally sponsored modernisation schemes. The Corporation intends to give a fillip to the handloom industry in the State and to improve the living conditions of the weavers.

3. A notice was issued on January 25, 1990 by the respondent to the petitioner stating that it has failed to enroll the weavers, who are working throughout the State, as Members of the Provident Fund and failed to remit the provident, fund dues under the Employees'' Provident Funds and Miscellaneous Provisions Act, 1952 (for short ''the Act''). An inquiry was sought to be held as provided u/s 7A of the Act. In reply to the notice the petitioner contended that the weavers are not employees of the Corporation and they are not paid wages or salaries; they are paid charges for conversion of yarn into fabrics depending upon the type of fabric; weavers are not working in the premises of the Corporation; they have no fixed hours of work and there is no control or supervision over them nor any contract of employment exists between the weaver and the Corporation.

4. However, the Commissioner who enquired into the matter took the view that the petitioner has not included those weavers who receive yarn from the Corporation at a price fixed by it, weave it and return the finished products to the Corporation, for which price is fixed. He treated, the difference between the price charged for the yarn supplied to the weavers and the price fixed for the finished goods returned as wages. He adverted to various tests laid down in several decisions to find out as to whether the petitioner''s relationship with the weavers is that of an employer employee so as to attract the provisions of the Act or not and concluded that the Corporation has to extend the benefits of the Act to the weavers engaged by it for getting the finished products on the looms installed by them in their respective dwelling houses.

5. Unfortunately for us no material is forthcoming either from the Corporation or from the respondent as to the basis upon which these conclusions have been drawn. The petitioner has not produced any scheme under which the weavers are assisted in the manner stated by it or the manner in which the Corporation functions. The reply to the notice issued by it merely contains discussion of law and not of facts at all. It is nowhere stated as to how the Corporation functions in relation to the weavers whether any raw material is supplied by the Corporation which is woven into fabric and returned to the Corporation or what is the nature of relationship between them or they merely act as good Samaritans to enable them to obtain appropriate financial assistance or living made skills or fetch modernised equipment. None of these materials are available on the record, nor

does the Commissioner in the course of the order or otherwise state as to the basis of the information secured by him to draw the inference to which we have adverted to earlier. Therefore, the whole matter, appears to us, proceeded on conjectures or surmises and not on facts. The proper course for the petitioner would have been to produce the schemes under which the weavers supply the fabrics to the Corporation under different categories or whether they are provided any assistance and the nature of that assistance. Even if schemes were not available readily with the Corporation, some responsible Officer of the Corporation should have filed an affidavit or produced evidence, which could have been verified by examining those persons to find out the nature of activities carried on by it in relation to the weavers. Unless that exercise is done, it will be very difficult to accept the inference as has been done now by the Commissioner.

6. In the circumstances, the order made by the Commissioner cannot be sustained, the same shall stand quashed and the matter shall Stand remitted to the Commissioner for fresh consideration in accordance with law and in the light of this order. The petitioner shall appear before the Commissioner on February 24, 1997 and take further directions in the matter. In the meanwhile, it shall produce all material available with it before the Commissioner and also file an appropriate affidavit explaining the manner in which the activities are carried on to enable the Commissioner to draw an appropriate inference. Petition is allowed accordingly.