

(1968) 01 MAD CK 0027
In the Madras High Court

Kubera Press

APPELLANT

Vs

Regional Provident Fund Commissioner

RESPONDENT

Date of Decision : 29-01-1968

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 1, 16

Citation : (1968) 2 LLJ 799 : (1968) 81 LW 304

Hon'ble Judges : T. Venkatadri, J

Bench : Single Bench

Judgement

T. Venkatadri, J.—The petitioner in this writ petition is the Kumbura Press represented by its proprietor, K. Sivaraman. The writ petition is for the issue of a writ of certiorari to call for the records of the Regional Provident Fund Commissioner, Madras, in C/MD/561 Regl, dated 12 April 1965 and quash the order dated 12 April 1965.

2. The case of the petitioner is that originally the printing press which commenced in 1949 was run by one Ch. Subba Rao. The printing press went into voluntary liquidation in 1960. As the company was a member of the provident fund scheme and was submitting returns, when it went into voluntary liquidation and the employees were discharged; they were paid all the arrears discharged; they were paid all the arrears of provident fund and the account with the Provident Fund Commissioner was also closed. In the course of winding up, one Purim Parkas Rao purchased the press and he was running the same. He was not a member of any provident fund scheme and he was not submitting any returns to the Regional Provident Fund Commissioner. Nor was he asked, it is stated, to submit any return to the Commissioner. In the year 1961 the petitioner purchased the printing machinery and fittings from the said Purim Parkas Rao. The Regional Provident Fund Commissioner asked the petitioner in 1964 to pay contribution to the provident fund scheme, of a sum of Rs. 3,260. In this writ petition, the petitioner questions the propriety of the order passed by the Regional Provident Fund Commissioner.

3. Learned Counsel for the petitioner submitted that the petitioner-press was an infant industry entitled to protection u/s 16 of the Employees' Provident Funds Act and that the provisions of Section 1(3) of the Act could not be extended to it. Learned Counsel for the respondent, no doubt, relied on two decisions of this Court. In *R.L. Shani & Co. v. Union of India* (by the Regional Provident Fund Commissioner, Madras) and Anr. 1964 L.L.J. 169, it was held that where and establishment, such as a factory, has been set up and the owner of the factory does not run the business on his own but chooses to lease the factory from time to time, every fresh lease cannot give rise to setting up of the factory afresh. I think that case can easily be distinguished from the present case. That was a case of lease. But in the present case, the original pirating press went into voluntary liquidation and in the course of winding up of the press it was purchased by Param Prakasa Rao. He was not member of the provident fund scheme. The petitioner purchased it from Param Prasasa Rao. In the same case, the learned Judge has observed that under the provisions of Section 16 of the Act, establishments which come into existence for the first time are granted protection for a certain period to enable them to attain financial stability. In the other case, *Devi Press, Madras, (by partner, Ct. Ve, Ve. Varavan Chettiar) v. Regional Provident Fund Commissioner, Madras* and Anr. 1955 I L.L.J. 294, a limited company which was running a printing press went into voluntary liquidation prior to 1957 and the dispute between the workers and the management as a result of the winding up and closure was settled by an agreement that all the workers except these in the binding department would be reemployed by the new management. The concern was taken over by a firm of registered partnership. It was held that the old establishment must be deemed to have continued although in a different name when it was taken over by the partnership. That case can also be distinguished. In that case, the old employees contained in the partnership firm also. In the instant case, the original printing press went into liquidation. That printing press was a member of the provident fund scheme. But in the course of the winding up, it was purchased by Param Parakasa Rao. He was not a member of the scheme. The petitioner purchased the machinery and fittings and started a new press employing new workers. In such circumstances, in law, it cannot be said that it is a continuation of the old firm. On the other hand, indications are that it is setting up of an establishment afresh. The petitioner is therefore, entitled to protection under the Act.

4. The writ petition is accordingly allowed. There will be no order as to costs.