
(1970) 07 CAL CK 0007
In the Calcutta High Court

M.G. Poddar

APPELLANT

Vs

Regional Provident Fund Commissioner

RESPONDENT

Date of Decision : 31-07-1970

Acts Referred:

Constitution of India, 1950 — Article 14, 19

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 1, 1(3) (a), 1(3)(b), 16, 17

Citation : (1971) 1 ILR (Cal) 389

Hon'ble Judges : Pradyot Kumar Banerjee, J

Bench : Single Bench

Advocate : S.D. Banerjee, T.P. Das and P.K. Ghosh, for the Appellant; S.C. Das Gupta and Debesh Chandra Mukherjee, for the Respondent

Final Decision : Dismissed

Judgement

Mr. Justice Pradyot Kumar Banerjee

1. The Petitioner is a Solicitor and Advocate of this Court and is practicing in this Court. The Petitioner was enrolled as a Solicitor in 1935 and as an Advocate on April 28, 1950. He is also a Supreme Court Advocate enrolled as such on November 4, 1955. It is alleged that for the purpose of carrying on the aforesaid profession of Attorney as well as Advocate, the Petitioner had an office at 6, Old Post Office Street, Calcutta, and employed clerk, bearers etc. On October 27, 1964, he was served with a notice intimating that the Employees' Provident Fund Act of 1952 had been extended to the Attorneys as defined in the Advocates Act, 1961, by the notification of the Government of India dated September 17, 1964, and directed the Petitioner to transfer the past accumulations in the existing provident fund. In the said notice it is, however, stated that if it is contended that the Petitioner's establishment does not come within the provision of the said Act or Scheme, the Petitioner may show cause. By letter dated December 1, 1964, the Petitioner states that the Act and Schemes are not applicable to the Petitioner and that the profession of an

Attorney and/or Advocate is not an establishment within the meaning of the said Act and, as such, the notice is prima facie without jurisdiction. The Petitioner's profession as an Attorney is not an establishment and by carrying out a profession as a Solicitor and/or Advocate cannot be said to be an establishment within the Employees' Provident Fund Act of 1952 and, as such, the notice issued against the Petitioner is prima facie without jurisdiction and liable to be set aside.

2. Before I deal with the question raised it will be convenient for me to set out Section 1 Sub-section (3) before the amendment of the said section in 1956. The said section stood as follows: -

(3). Subject to the provisions contained in Section 16, it applies in the first instance to all factories engaged in any industry specified in Schedule I in which fifty or more persons are employed, but the Central Government may, after giving not less than two months' notice of its intention so to do. Notification in the Official Gazette, apply the provisions of this Act to all factories employing such number of persons less than fifty as may be specified in the notification and engaged in any such industry.

After the amendment by the Employees' Provident Fund (Amendment) Act, 1952, the said Sub-section reads as follows: -

Sub-section (3). Subject to the provisions contained in Section 16, it applies, (a) to every establishment which is a factory engaged in any industry specified in Schedule I and in which 20 or more persons are employed, and (b) to any other establishment employing 20 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 of its intention so to do by Notification in the Official Gazette, apply the provision of this Act to any establishment employing such number of persons less than 20 as may be specified in the notification.

3. Mr. Sankar Das Banerjee appearing for the Petitioner contended that the Employees' Provident Fund Act and Schemes do not apply in the matter of the Solicitor's firm because it is argued that they are neither trade nor establishment and not a factory engaged in industry or any other establishment within the meaning of the Act. It is argued by Mr. Banerjee that in other establishment mentioned in Section 1, Sub-section (3)(b) there must be an establishment which is the nature of a factory or such commercial establishment which is either trade, industry or business undertaking. A Solicitor's firm, it is argued is neither a factory nor trade or industry or a commercial establishment coming within the mischief of the Act. Mr. Banerjee relied upon the cases (1) Secretary, Madras Gymkhana Club Employees' Union Vs. Management of the Gymkhana Club, and (2) Cricket Club of India Vs. Bombay Labour Union and Another, and argued that the Solicitor's firms are not engaged in either any industry or trade.

4. The cases relied upon by Mr. Banerjee are cases under the Industrial Disputes

Act. It has been held therein that an industry or trade produces material service. It has been held by the Supreme Court as follows: -

Material services involve an activity carried on through company-operation between employers and employees to provide the community with the use of something such as electric power, water, transportation, mail delivery, telephone and the like. In providing these services there may be by employment of trained men and even professional men but the emphasis is not on what these men do but upon the productivity of a service organized as an industry and commercially valuable. Thus the services of professional men involving benefit to individuals according to their needs, such as Doctors, Teachers, Lawyers, Solicitors etc. are easily distinguishable from an activity such as transport service. The latter is of a commercial character in which something is brought into existence quite apart from the benefit to particular individuals. It is the production of this something which is described as the production of material services.

5. The Supreme Court held in the said case that the Hospitals, Gymkhana club or Cricket club of Solicitor's firm are not industry or within the meaning of the Industrial Disputes Act and, therefore, the dispute between the employers and employees is not industrial dispute within the meaning of the Act and any reference would be under the said Act without jurisdiction. In this case, however, prior to the amendment of 1956 Provident Fund Act, it was made applicable only in respect of an establishment which is a factory engaged in an industry specified in Schedule of the Act, but after the amendment it has been extended to any other establishment employing 20 or more persons. u/s 1(3)(b) it has been made clear that the Act may be applied to any other establishment employing 20 or more persons or group of such establishment which the Central Government may by Notification in the Official Gazette specify in this behalf. Therefore, the Central Government was given the power to include any other establishment and on such notification being made the establishment comes within the purview of the Act. In the petition though various points were taken regarding the violation of Articles 14 and 19, Mr. Banerjee did not urge the points at the hearing. It appears, however, that this is no more available to the Petitioner because Section 1(3)(b) has already been held to be intra vires by the Supreme Court in (3) Mohmedalli and Others Vs. Union of India (UOI) and Another, . It appears to me from the said judgment that the observation made by the Supreme Court does answer the point raised in this case also. While dealing with the points regarding Section 1(3)(b) which was held to be intra vires and not violations of Article 14 of the Constitution, the Supreme Court held as follows: -

The whole Act is directed to institute provident fund for the benefit of the employees in factories and other establishments, as the preamble indicates. The institution of provident fund for employees is too well-established to admit of any doubt about its utility as a measure of social justice. The underlying idea behind the provisions of the Act is to bring all kinds of employees within its fold as and

when the Central Government might think fit, after reviewing the circumstances of each class of establishments. Schedule I to the Act contains a list of a large variety of industries engaged in the manufacture of diverse commodities, mentioned therein. To all establishments which are factories engaged in the industries enumerated in Schedule I, the Act has been made applicable of its own force, subject to the provisions of Section 16, which has indicated the establishments to which the Act shall not apply. The schedule is liable to be added to or modified so as to include other categories of industries not already included in Schedule I. So far as establishments which do not come within the description of factories engaged in industries, the Central Government has been vested with the power of specifying such establishments or class of establishments, as it might determine, to be brought within the purview of the Act. The Act has been given sufficient indication of the policy underlying its provisions namely, that it shall apply to all factories engaged in any kind of industry and to all other establishments employing 20 or more persons.

6. The Supreme Court has held that so far as the establishment which did not come within the description of factory engaged in an industry, the Central Government has been given power to notify the establishment for bringing such establishment within the purview of the Act. It has already been held in the said case that the power is not uncanalised power and the underlying policy was given in the whole Act itself. This is a social legislation by which the Legislature wanted to give benefits to the employees of any establishment not only to employees working in factories engaged in any industry. In my opinion, this is a social legislation to provide for some security to the employees after their retirement and beneficial for them for the welfare of the employees of certain establishment named by the Central Government. I do not think that an establishment in order to come within the purview of the Act must be a factory engaged in any industry or such establishment which is neither engaged in industry or trade or business producing materials service. Analogy of the Industrial Disputes Act in the matter of Employees' Provident Fund Act cannot and should not be imported. I do not further think that establishment coming u/s 1(3)(b) should be read as ejusdem generis with Clause (a). In my opinion, the establishment coming u/s 1(3)(a) the establishment opened may not be factories which are engaged in industry. They can be any establishments which are notified by the Central Government for bringing the said establishment within the purview of the Act.

7. Mr. Banerjee contended that while introducing the amendment it was stated in the object and reason as follows: -

The Employees' Provident Fund Act of 1952 applied originally to factories engaged in six industries specified in Schedule I, namely, cement, cigarette, electrical machinery and general engineering products, iron and steel, paper and textile.

Section 4 of the Act provides for the extension of the Act, but every extension

must be by Notification in the Official Gazette. There has been a persistent demand for extension of the provident fund benefits to all the industrial workers, and the Act has been recently extended to 17 additional factories and industries by a notification. Section 4, however, provides for application of the Act to factories and industries only and there is no provision in the Act for the others like commercial establishment etc. It is, therefore, proposed to include a provision in the Act to the effect that subject to the exemption provided in Section 16, the Act shall apply to any establishment or industry as may be specified by the Central Government by a Notification in the Official Gazette.

8. Mr. Banerjee contended that the object and reason makes it clear that the amendment was made in order to enable the Act to extend to every establishment like mines and commercial establishment etc. It is stated by Mr. Banerjee that the Solicitor's firm is not a commercial establishment and, as such, Section 1(3)(b) cannot be applied. In my opinion, Section 1(3)(b) and Section 4 read with Section 17 make provision for application of the Act insofar as factories engaged in any industries are concerned. Section 1(3)(b) makes provision for application of the Act in respect of any establishment employing 20 or more persons at a time. This is a social legislation in order to give social security to the retiring employees of any other establishment. The statute gives the appropriate Government the power to make the notification in respect of any such establishment and it must be taken as it has been held by the Supreme Court that the Government is in a position to have all the relevant and necessary information in relation to each kind of establishment enabling it to determine which of such establishment can bear the additional burden of making contribution by way of provident fund for the benefit of its employees. In that view of the matter, I hold that a Solicitor's firm is an establishment within the meaning of Section 1(3)(b) of the Employees' Provident Fund Act.

9. In that view of the matter, in my opinion, this application must fail and the rule is accordingly discharged. All interim orders are vacated.

There will be no order as to costs.