

(1968) 06 KL CK 0017
In the High Court Of Kerala

Mohammed Kutti (K.M.)

APPELLANT

Vs

Regional Provident Fund Commissioner and Others

RESPONDENT

Date of Decision : 13-06-1968

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 1, 5

Citation : (1968) 2 LLJ 466

Hon'ble Judges : M.S. Menon, C.J;P. Govindan Nair, J

Bench : Division Bench

Judgement

M.S. Menon, C.J.—The Vencheri Rubber Estate belonged to the petitioner's father. It came within the ambit of the Employees' Provident Funds Act, 1952, and the Scheme framed Section 5 thereof.

2. The Estate was partitioned on the death of the father among the petitioner and his two sisters. The partition was on 1 July 1964 and is evidenced by Document No. 2267 of 1964 of the office of the Sub-Registrar, Chavayoor.

3. According to the petitioner the portion of the estate allotted to him on partition should be treated as a separate establishment and when so treated will not come within the ambit of the Employees' Provident Funds Act, 1952. The submission is based on Sub-section (3) of Section 1 of the Act which makes it clear that the Act will not apply to establishments in which twenty or more persons are not employed. The portion of the estate which the petitioner obtained on partition, it is stated, employs less than twenty persons and is hence outside the purview of the allotment.

4. It is true that so long as the integrity of an establishment to which the Act applied is not broken, the Act will continue to apply, in spite of the fact that the number of persons employed therein falls below twenty except in the cases covered by the proviso to Sub-section (5) of Section 1 of the Act. That sub-section together with its proviso reads as follows:

An establishment to which this Act applied shall continue to be governed by this

Act notwithstanding that the number of persons employed therein at any time falls below twenty:

Provided that where for a continuous period of not less than one year the number of persons employed therein has been less than fifteen, the employer in relation to such establishment may cease to give effect to the provisions of this Act and any scheme framed thereunder, with effect from the beginning of the month following the expiry of the said period of one year, but he shall, within one month of the date of such cessation, intimate, by registered post, the fact thereof to such authority as may be specified by the appropriate Government in this behalf.

5. What we are concerned with in this case, if the petitioner's contention is correct, is not as establishment the integrity of which has not been broken; but an establishment which has been split into three separate establishments by a process of partition. This means that the original establishment has ceased to exist, and that Sub-section (5) of Section 1 does not apply. The applicability of the number of persons employed by the original establishment but on the number of persons employed by each of the establishments formed by the partition of the original establishment.

6. Our attention has been drawn to R.L. Sahni and Co. Vs. Union of India and Another, . In the case the Madras High Court said at p. 235:

...It cannot be postulated that each time there is a change of hands a new establishment has been set up. A mere change of hands would not clothe the establishment with newness....

7. What we have before us, however, is not a change in the ownership of an establishment which continues to exist as before; but the cessation of an establishment by disruption into three separate establishments by the partition effected among the petitioner and his two sisters on 1 July 1964. The Questions to be considered in such a case are:

(a) Is the partition real and bona fide:

(b) Did it disrupt the integrity of the establishment and created three separate establishments?

(c) And does the separated establishment with which we are concerned employ less than twenty persons?

All that we can say at present is that if the answers to the three questions are in the affirmative, the Act will not apply and the petitioner will not be liable thereunder; and that subject to the freedom to investigate those questions the contention of the petitioner has to be sustained.

8. The original petition is allowed as above No. costs.