(1968) 11 MAD CK 0009

In the Madras High Court

Mrs. P.S.N.S. Ambalavana Chettiar and Co. (P.) Ltd.	APPELLANT
Vs	
Regional Provident Fund Commissioner	RESPONDENT

Date of Decision : 15-11-1968

Acts Referred:
Employees State Insurance Act, 1948 — Section 2(9)

Citation : (1969) 82 LW 297 : (1969) 2 MLJ 160

Hon'ble Judges : P. Ramakrishnan, J

Bench : Division Bench

Judgement

P. Ramakrishnan, J.—This writ petition is filed by Messrs. P.S.N.S. Ambalavana Chettiar and Company (Private) Limited, Madras.

According to the affidavit of the petitioner, the petitioner is a private limited company carrying on the business of imports and exports dealing in

non-ferrous metals and other commodities like papers, Madras cables, and are also engaged in the floatation of new concerns. The registered

office of the company is situated at No. 14. Mint Street, Madras-3, and all, the business of the company is carried on in that office, where there

are five employees. In 1951, as part of its activities the petitioner started a factory styled as Sri Ram Rolling Mills at No. 7, Nelson Manicka

Mudaliar Road, Aminjikarai, about five miles from the above registered office at Mint Street. The factory was engaged in rolling non-ferrous metals

and about thirty workers are employed in the factory. After the coming into force of the Employees'' Provident Fund Act (Central Act XIX of

1952), the provisions of that Act were applied to the workers in the factory and the petitioner had raised no objection to such application. The

petitioner is aggrieved with the order issued to it on 2 1st December, 1965, bringing the employees in the office in Mint Street within the scope of the Employees'' Provident Fund Act XIX of 1952. The order states:

...it has been decided that the individuals working in the head office, doing the job of maintenance of accounts, procuring of raw materials and

selling of articles produced by the factory arc eligible to be enrolled as members of Employees'' Provident Fund from 1st January, 1961.

You are therefore requested to enroll those employed in the head office in connection with the work of the factory as members of the Employees''

Provident Fund with cruet from 1st January, 1961, and furnish relevant supplementary returns and remit contributions and administrative charges,

etc.

2. The petitioner contends in his affidavit that the workers in the Mint Street office cannot be treated in any sense as employees of the factory and

that the Employees'' Provident Fund Act cannot be extended to them. This contention is amplified by stating that the employees at the office of the

company at Mint Street "" do not do and are not in any way concerned or connected with any of the processes of manufacture in the factory "". For

the above reasons the petitioner has applied in this writ petition under Article 226 of the Constitution for quashing the aforesaid order dated 21st

December, 1965, by a writ of certiorari.

3. In the counter-affidavit of the respondent, the Regional Provident Fund Commissioner, it is stated that when a physical check was made on 24th

March, 1965, by the Provident Fund Inspector it was revealed that some of the employees were working; at No. 14, Mint Street, Madras,

relating to the factory work, and that, as the company owns the factory and as the employees of the company attend to all the work of purchasing

the raw materials, selling the finished products of the factory, maintaining accounts, etc., the company is the head office and the factory is only a

branch of the company for all practical purposes. On this basis the petitioner was required to enroll all its employees (in the head office) and pay

the provident fund dues from 1st January, 1961, the date on which Section 2-A became operative. The counter-affidavit goes on to state that it is

the company of the petitioner which procures the raw materials for the factory, sells the finished products and administers the affairs of the factory,

and that as there is unity of management, supervision and control, unity of finance and employment, unity of labour and conditions of service, etc., between the factory and the company, it is not open to the petitioner to contend that the company is not a unit of the factory and that Section 2-A

of the Act cannot be invoked. Section 2-A states:

Establishment to include all departments and branches ::

For the removal of doubts, it is hereby declared that where an establishment consists of different departments or has branches, whether situate in

the same place or in different places, all such departments or branches shall be treated as parts of the same establishment.

4. The word '' establishment'', as this Court had occasion to point out more than once in a number of prior decisions, has not been defined in the

Act, but an attempt has been made to do so by a Bench of this Court in R.L. Sahni and Co. Vs. Union of India and Another, , where the meaning

given to the word ''establishment'' is ""house of business "", which is one of the different meanings for the word found in the Oxford Dictionary. The

principle of this decision has been followed by a subsequent Bench of this Court (to which I was a party) in an unreported decision in W.A.No.

167 of 1965. The question for consideration is whether the factory at Aminjikarai and the office at Mint Street, Madras, constitute one "" house of

business "" so as to form a single establishment for the purpose of the Employees'' Provident Fund Act. The Department has taken the stand that all

the workers in the office at Mint Street are engaged in work which is connected with the work in the factory. In the impugned order it is set down

that the work in the Mint Street Office connected with the work of the factory includes the maintenance of accounts, procuring of raw materials

and selling of the articles produced by the factory. The petitioner on the other hand contends in his affidavit that the work done by the employees in

the office at Mint Street, Madras is not in any way concerned or connected with any of the processes of manufacture in the factory. It appears to

me that this restriction of the work of the employees in the company to the process of manufacture in the factory is taking too narrow a view. An

establishment which involves the running of a factory may also require a staff for procuring raw materials and disposing of the manufactured

products and also for the maintenance of accounts. There can be integral relation between all these items of work and it may not be proper to

separate the process of manufacture in the factory from the office establishment which attends to work connected with the factory and its raw

materials or products and its accounts. Establishment for this purpose must be viewed in a larger sense than the process of manufacture. But the

petitioner contends that the work in the Mint Street office is not exclusively connected with the work of the factory. The factory business is only

one of a number of activities which are carried out in that office. The petitioner is aggrieved because all the employees in the Mint Street Office

have been automatically assumed to have done work connected with the factory, while there is room for a more careful examination of the work

which the employees at the office are asked to do and determine whether there is integral connection between their work and the work of the

factory. In this connection the petitioner''s Counsel offered to produce data which would show that it is possible to segregate the work done by the

individual employees in the Mint Street office in the above manner, and according to him only such of those employees whose work can be shown

to be connected with the factory could be brought under the provisions of the Employees Provident Fund Act. In support of his argument the

learned Counsel has also referred to the judgment of this Court in Employees'' State Insurance Corporation with its Regional Office at Coimbatore

Vs. Ganpathia Pillai and Others, , a case which arose under the Employees'' State Insurance Act, 1948. There also the word '' employee '' meant

any person employed for wages in or in connection with the work of a factory or establishment to which the Act applies. Of course, there is a

further extension of the definition in this Act which gives it a wider scope. Stress is laid by the learned Counsel on the observations at page 598

where reference is made to an affidavit to show that a particular worker did not attend to the work of the factory as such, but his work was

confined to the accounts of the managing agent''s office and that, of the other persons sought to be made liable, it could not be said in any sense

that they were employed on any work of or incidental or preliminary to or connected with the work of the factory, but they were all persons

employed in the managing agent''s office. These observations follow the definition of '' employee '' in Section 2 (9) of the Employees'' State

Insurance Act which is clearly an extended one, whereas under the Employees'' Provident Fund Act, the definition of '' employee'' is more succinct. Section 2 (i) of the latter Act defines '' employee'' as meaning any person who is employed for wages in any kind of work, manual or

otherwise, in or in connection with the work of an establishment and who gets his wages directly or indirectly from the employer. Stress is thus laid

on the employee being employed in connection with the work of the establishment. Assuming therefore that "" establishment"" has to be viewed in the

sense of a "" house of business"" as laid down in the decisions mentioned above, it is necessary to find out which of the workers in the Mint Street

office fall within the definition in Section 2 (f); that is, which of them are persons who are employed in connection with the work of the

establishment of the petitioner in its sense of a "" house of business "". There may be scope, on a more careful examination of the work done by the

individual workers in the Mint Street office, to find out whether such connection between their work and the work of the factory can be established

or not and confine the application of the Employees'' Provident Fund Act to the persons who are found to satisfy this test. The impugned order

dated 21st December, 1965, appears to assume that all the workers in the Mint Street office are engaged in connection with the work appertaining

to the factory, like the maintenance of accounts, procuring raw materials and selling of the articles produced by the factory. The Counsel for the

petitioner has filed a supplementary affidavit detailing the work done by the employees in the Mint Street office. It will be open to the petitioner to

afford data to the Regional Provident Fund Commissioner for the purpose of showing whether all or only some of the workers in the Mint Street

office are connected with the factory in the above manner, or whether there is still room for any of the workers in that office being exempt. The

order of the Regional Provident Fund Commissioner appears to involve a conclusive determination that all the workers of the Mint Street office are

liable to contribute under the Employees Provident Fund Act. But in view of the supplementry affidavit now filed before me, another opportunity

will be given to the management to produce data to clarify the position. The Regional Provident Fund Commissioner is directed to reconsider the

case of the workers in the Mint Street office, and if any of them are found not to be connected with the work of the factory, exclude them from the

scope of the Employees'' Provident Fund Act, if the data afforded are sufficient for that purpose.

5. The Writ Petition is allowed and the respondent is directed to re-examine the case of the workers in the Mint Street office in the light of the

circumstances mentioned above. I may add that one of them is now alleged to have left the office subsequently. Now there remains only four

workers for consideration. No order as to costs.

