

(1991) 11 KAR CK 0017

In the Karnataka High Court

Case No : W.P. Nos. 15944 to 15953/1986 c/w W.P. Nos. 19333/1986, 17078 to 17080/1986, 17341 to 17348/1986, 19945/1986, 16904 and 16905/1986, 16907/1986, 18446/1986, 12056 and 12057/1987, 11301/1987, 10916/1987, 11203/1987, 9886/1987, 7743 and 7744/1987, 7434/1987,

M/s. Vidyaranya Chitra Mandir

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 11-11-1991

Acts Referred:

Cine-Workers and Cinema Theatre Workers (Regulation of Employment) Act, 1981 — Section 24

Constitution of India, 1950 — Article 14

Citation : (1991) 3 KarLJ 201

Hon'ble Judges : R. Ramakrishna, J

Judgement

1. In this batch of writ petitions, the petitioners who are all owners of Cinema Theatres scattered all around the Karnataka State, are challenging the validity of Section 24 of the Cine Workers and Cinema Theatre Workers (Regulation of Employment) Act, 1981 (hereinafter referred to as "Cinema Theatre Workers Act", and the Notification dated 30-4-1986 issued under Section 7(1) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the "Employees' Provident Funds Act") and for other consequential reliefs.

2. According to the petitioners, the provisions of Section 24 of the Cinema Theatre Workers Act are unreasonable and violative of Article 14 of the Constitution of India and as such, it shall be declared as void. They have also further contended that the Parliament in enacting Section 24 of the Act has singled out the cinema theatre for discriminatory treatment and there is no rational difference between the cinema theatre employees and those who are working in other Industries or Establishments having five or more persons as employees in the matter of application of the provisions of the Employees' Provident Funds Act. They have also further contended that the extra burden

imposed arbitrarily on their respective theatres is violative of their right to carry on business and violative of Article 19(1)(g) of the Constitution.

3. Since an identical question of law is involved in all these petitions, the original order is passed in Writ Petition No. 15944 of 1986.

4. The Employees' Provident Funds Act came into force on 14-3-1952. As per the preamble, the intendment of the Act is to provide for the institution of provident funds, family pension fund and deposit-linked insurance fund for employees in factories and other establishments. Section 1(3) of the Act applies to every factory referred to in clause (a) and to any other establishment referred to in clause (b) employing 20 or more persons or class of such establishments which the Central Government may, by notification in the Official Gazette, specify in that behalf. The schemes under Sections 5, 6-A and 6-C of the Employees' Provident Funds Act, providing for employees' provident funds, employees' family pension fund and for employees' deposit-linked insurance fund were issued in the year 1952. The Act by Notification of the Government of India issued on 31-7-1961 under Section 1(3) made applicable to cinema theatre employing 20 or more persons.

5. The Cinema Theatre Workers Act received the assent of the President on 24-12-1981 and the Act came into force with effect from 1-10-1984. The Act intends to provide for the regulation of the conditions of employment of certain cine workers and cinema theatre workers and the matters connected therewith. Under Section 24 of the Cinema Theatre Workers Act, the validity of which is challenged in these writ petitions enacts thus:

"The provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, as in force for the time being, shall apply to every cinema theatre in which five or more workers are employed on any day, as if such cinema theatre were an establishment to which the aforesaid Act had been applied by a notification of the Central Government under the proviso to sub-section (3) of Section 1 thereof, and as if each such worker were an employee within the meaning of that Act."

6. The validity of Section 24 of the Cinema Theatre Workers Act and the Notification dated 30-4-1986 of the Government of India, Ministry of Labour (produced as Annexure-C in Writ Petition No. 15944/1986) amending the Employees' Provident Funds Scheme, 1952, issued under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, are challenged as violative of Article 14 of the Constitution. According to the petitioners, due to the introduction of Televisions, Videos and Cable Videos, the business of the theatres is reduced and therefore, they cannot be asked to bear the extra burden intended under the Notification. The further contention of the petitioners is that, the Notification dated 30-4-1986 should not be made retrospective effect from 1-10-1984 and thereby making the petitioners to pay their contribution and also employees' contribution during that period. Their further contention is, since the

cinema theatre is not a factory, it will fall only within the meaning of the expression "Establishment" and there is no reasonable basis for the classification treating the cinema theatre separately to fall under the coverage of the Act if it employs five or more workers.

7. Sri K. Lakshminarayana Rao, learned counsel who represented majority of the petitioners in these writ petitions, has submitted that there are other industries like Agarbathi Industries which are identically placed in respect of number of employees employed, having been exempted from the purview of the Act, there is discrimination.

8. The preamble of the Employees' Provident Funds Act, referred to above, shows that the Act is to provide for the institution of provident funds, family pension and deposit-linked insurance fund for the benefit of employees in factories and other establishments. The Act is intended for the benefit of the employees as is clear from its objects and reasons extracted below:

"The question of making some provision for the future of the industrial worker after he retires or for his dependants in case of his early death, has been under consideration for some years. The ideal way would have been provision through old age and survivors' pensions as has been done in the industrially advanced Countries. But in the prevailing conditions in India the institution of a pension scheme cannot be visualized in the near future. Another alternative may be for provision of gratuities after a prescribed period of service. The main defect of a gratuity scheme, however, is that amount paid to a worker or his dependants would be small, as the worker would not himself be making any contribution to the fund. Taking into account the various difficulties, financial and administrative, the most appropriate course appears to be the institution compulsorily of contributory provident funds in which both the worker and the employer would contribute. Apart from other advantages, there is the obvious one of cultivating among the workers a spirit of saving something regularly. The institution of a provident fund of this type would also encourage the stabilisation of a steady labour force in industrial centres."

This legislation is intended for the benefit of the weaker sections of the society and is made applicable to cinema theatres if it employs five or more workers. Though Section 1(a) and (b) subject to the provisions contained in Section 16 applies to every establishment specified in Schedule I in which 20 or more persons are employed and also to any other establishment employing 20 or more persons, the proviso clause empowers the Central Government to extend the provision of this Act to any establishment employing such number of persons even less than 20 by a notification in the Official Gazette.

9. Under Section 24 of the Cine Workers and Cinema Theatre Workers (Regulation of Employment) Act, 1981, a provision was created in the said Act to extend the benefit of the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, by a Notification under the proviso to sub-

section (3) of Section 1. This indicates that the provision of Section 24 was in force when this Act came into force with effect from 1-10-1984 and by issuing a Notification Annexure-C, the provision was extended to the cine workers with retrospective effect.

10. It is well established that while Article 14 forbids class legislation, it does not forbid reasonable classification for the purpose of legislation. The Supreme Court in *D.S. Nakara v Union of India*, AIR 1983 SC 130, 135, stated:

"The thrust of Article 14 is that the citizen is entitled to equality before law and equal protection of laws. In the very nature of things the society being composed of unequal a welfare State will have to strive by both executive and legislative action to help the less fortunate in society to ameliorate their condition so that the social and economic inequality in the society may be bridged. This would necessitate a legislation applicable to a group of citizens otherwise unequal and amelioration of whose lot is the object of State affirmative action. In the absence of the doctrine of classification such legislation is likely to flounder on the bed rock of equality enshrined in Article 14. The Court realistically appraising the social stratification and economic inequality and keeping in view the guidelines on which the State action must move as constitutionally laid down in Part IV of the Constitution, evolved the doctrine of classification. The doctrine was evolved to sustain a legislation or State action designed to help weaker sections of the society or some such segments of the society in need of succour."

11. In *Mohmedalli and Others v Union of India and Another*, AIR 1964 SC 980 the validity of Employees' Provident Funds Act, 1952 was challenged as discriminatory violating Article 14 of the Constitution. The Supreme Court held at para 11 thus:

"Where by a notification under Section 1(3)(b), the operation of the Act has been extended to all hotels and restaurants and by another notification under Section 5 read with Section 7(1), the Employees' Provident Funds (3rd Amendment) Scheme, 1961 is introduced, an individual hotel owner who comes under the general rule laid down in Section 1(3) and the scheme cannot contend that his establishment has been chosen for hostile discrimination."

12. In *R.K. Garg v Union of India*, (1981)4 SCC 675, 690, the Supreme Court considering the validity of the Special Bearer Bonds (Immunities and Exemptions) Act, 1981, stated:

"Another rule of equal importance is that laws relating to economic activities should be viewed with greater latitude than laws touching civil rights such as freedom of speech, religion, etc. It has been said by no less a person than Holmes, J., that the Legislature should be allowed some play in the joints, because it has to deal with complex problems which do not admit of solution through any doctrinaire or strait jacket formula and this is particularly true in case of legislation dealing with economic matters, where, having regard to the nature of the problems required to be dealt with, greater play in the joints has to

be allowed to the Legislature. The Court should feel more inclined to give judicial deference to legislative Judgment in the field of economic regulation than in other areas where fundamental human rights are involved."

The Court further held:

"The Court must always remember that, "legislation is directed to practical problems, that the economic mechanism is highly sensitive and complex, that many problems are singular and contingent, that laws are not abstract propositions and do not relate to abstract units and are not to be measured by abstract symmetry" that exact wisdom and nice adaptation of remedy are not always possible and that "Judgment is largely a prophecy based on meager and uninterpreted experience"."

13. A Division Bench of Kerala High Court in *M. Viswanatha Pai and Others v Regional Provident Fund Commissioner, Kerala and Others*, Vol. 71 FJR 505 while dealing an identical question now involved in these writ petitions, after referring to the case cited above and also the decision reported in *State of Gujarat v Sri Ambica Mills Ltd.*, (1974)45 FJR 381; *Hoechst Pharmaceuticals Ltd. v State of Bihar*, AIR 1983 SC 1019, 1046; *G.K. Krishnan v State of Tamil Nadu*, AIR 1975 SC 583; 592 and *Municipal Corporation, Ahmedabad v Jan Mohd. Usmanbhai*, AIR 1986 SC 1205, held thus:

"The classification of cinema theatres as a separate class for the purpose of coverage under the Employees' Provident Funds Act cannot be said to be discriminatory or violative of Article 14 of the Constitution. As is clear from the objects and reasons of the Act and its provisions, the Act is for the benefit of employees who form part of the economically weaker sections of the society and Section 24 of the Cinema Theatre Workers Act, 1981, extending the coverage of the Employees' Provident Funds Act to cinema theatres employing five or more workmen cannot, therefore, be said to be in any way discriminatory or opposed to Article 14 of the Constitution. The notification issued by the Government of India extending the coverage of the scheme under the Act to cinema theatres is also perfectly valid."

I am in respectful agreement with the view of the Kerala High Court.

14. The next question would be, due to its retrospective effect, whether the employer is liable to pay his contributions and employees' contribution from 1-10-1984 to 30-4-1986.

15. In *Viswanatha Pai's* case, the Division Bench of Kerala High Court has not considered this issue as in that decision, the constitutional validity of the Notification and Section 24 of the Cinema Theatre Workers Act were in question. This question is also covered by a decision of the Hon'ble Supreme Court of India in *The District Exhibitors Association, Muzaffarnagar and Others v Union of India and Others*, AIR 1991 SC 1381.

A batch of writ petitions have been filed before the Allahabad High Court in

respect of the Notification and Extension of the Act to the cine workers by virtue of Section 24 of the Cinema Theatre Workers Act. A Division Bench of Allahabad High Court dismissed the writ petitions filed by the petitioners upholding the Notification dated 13-4-1986. The said finding of the Allahabad High Court was challenged before the Supreme Court of India.

The High Court took the view that only those employees who were in employment on 30th April, 1986 and had not ceased working in a cinema in respect of whom the benefit was being claimed, could be entitled to get the benefit of the Scheme. In the notice, the demand of contribution was sought under the Scheme in respect of the employees working on 30th April, 1986 with effect from 1st October, 1984. The High Court took the view that since the demand was made for the employers' contribution in respect of the employees who were working on 30th April, 1986, it was wrong to argue that the Scheme was being incorrectly applied. Those workers who had left the cinema and had ceased to be its workers on 30th April, 1986, would certainly not be entitled to any benefit under the Scheme. Regarding the challenge to the demand by the Provident Fund Commissioner from the employers about the arrears of contribution, the High Court felt that there was no substance in that argument. The Supreme Court after considering the scheme of the Act, has ultimately held thus:

"The question, however, is whether by making the Scheme with retrospective operation, the employer could be saddled with the liability to pay employees' contribution w.e.f. 1st October, 1984 and if not from what other date? The answer to the question turns upon the implementation of the Scheme and in particular the giving effect to paras 30 and 32 of the Scheme. Para 30 provides that the employer shall, in the first instance, pay both the contributions payable by himself and also the contribution payable by the employees. It shall be the responsibility of the principal employer to pay both the contributions payable by himself and also in respect of the employees directly employed by him and also in respect of the employees employed by him through a contractor. Para 32 confers upon the employer the right to recover the employees contribution that has been paid by him under para 30. That could be recovered by the employer by means of deduction from the wages of the employees who are liable to pay. First proviso to para 32(1), however, limits that liability in expressly stating that no such deduction may be made from any wage other than that which is paid in respect of the period of which the contribution is payable. It is obvious from paras 30 and 32 that the employer has to pay the contribution of the employee's share but he has a right to recover that payment by deducting the same from the wages due and payable to the employees. It is significant to note that the deduction is not from the wages payable for any period, but only from the wages for the period in respect of which the contribution is payable and no deduction could be made from any other wages payable to the employees. In other words, the payment of employees contribution by the employer with the corresponding right to deduct the same from the wages of the employees could be only for the

current period during which the employer has also to pay his contribution.

In the instant case, for the period from 1st October, 1984 up to the date of the impugned Notification the employer has paid the full wages to the employees since during that period, there was no scheme applicable to his establishment. By retrospectively applying the Scheme could he be asked to pay the employees contribution for the period antecedent to the impugned notification. We think not. The Act and the Scheme neither permit any such payment nor deduction. He cannot be saddled with the liability to pay the employees' contribution for the retrospective period, since he has no right to deduct the same from the future wages payable to the employees."

Ultimately, the Supreme Court held at para 23 thus:

"In the result and for the foregoing reasons, we allow the appeals as indicated above by setting aside the Judgment of the High Court. We declare that the appellants are not liable to pay the employees' contribution for the period from 1st October, 1984 to 30th April, 1986."

16. In view of the above, the constitutional validity of Section 24 of the Cine Workers and Cinema Theatre Workers (Regulation of Employment) Act, 1981 (Act 50 of 1981) and the Notification dated 30-4-1986 issued under Section 7(1) of the Employees Provident Fund and Miscellaneous Act, 1952 are not violative of Article 14 of the Constitution of India and the same are valid. However, in the light of the finding of the Hon'ble Supreme Court with regard to the payment of contributions, for the period 1-10-1984 to 30-4-1986 in the District Exhibitors Association, Muzaffarnagar's case, it does not require a separate order by this Court.

In the result, these writ petitions fail and the same are hereby dismissed.