**(1994) 11 MAD CK 0042**

**In the Madras High Court**

**Case No :** Writ Petition No''s. 12533 and 14144 to 14146 of 1986

Murugan Talkies APPELLANT

Vs

Union of India (UOI) and Another RESPONDENT

**Date of Decision :** 24-11-1994

**Acts Referred:**

Cine-Workers and Cinema Theatre Workers (Regulation of Employment) Act, 1981 — Section 24, 25
Constitution of India, 1950 — Article 14
Payment of Gratuity Act, 1972 — Section 1(3), 14

**Citation :** (1995) 2 LLJ 1129 : (1995) WritLR 6

**Hon'ble Judges :** Srinivasan, J;S.S. Subramani, J

**Bench :** Division Bench

**Advocate :** K.M. Vijayan and C. Selvaraju, for the Appellant; P. Narasimman, S.C.GSC for 1st Respondent and V. Vibhishanan, for 2nd Respondent, for the Respondent

**Final Decision :** Partly Allowed

## Judgement

Srinivasan, J.—In this batch of writ petitions, the validity of Sections 24 and 25 of the Civil Workers and Cinema Theatre Workers

(Regulation of Employment) Act, 50 of 1981, hereinafter called the Act, is challenged. Besides that, a challenge is also made of the validity of the

notification of the Government of India bearing No. S. 35016/1/86-SS/II, Ministry of Labour, dated April 30, 1986.

2. Sections24 and 25 of the Act are in the following terms:

24. Application of Act 19 of 1952: 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, and is 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.

25. Application of Act 39 of 1972:- The provisions of the Payment of Gratuity Act, 1972, as in force for the time being shall apply to or in

relation to every worker employed in a cinema theatre in which five or more workers are employed or were employed on any day of the preceding

twelve months, as they apply to, or in relation to, employees within the meaning of that Act.

3. The Act was passed in order to provide for the regulation of the conditions of employment of certain cine-workers and cinema theatre workers

and for matters connected therewith. While the expression , ""cine-worker"" has been defined in Section 2(c) of the Act, there is no definition of the

expression ''cinema theatre worker'' nor is there any definition of the word ''worker''. But Sections 24 and 25 of the Act use the expression

''worker'' or ''workers''. The notification, which is referred to above, is making the provisions of Employees'' Provident Funds Scheme, 1952,

applicable retrospectively from October 1, 1984 to cinema theatres employing 5 or more workers as specified in Section 24 of the Act.

4. The validity of Section 25 is attacked on two grounds. (1) The provisions of the said Section are inconsistent with Section 1(3)(b) of the

Payment of Gratuity Act read with Section 14 of the said Act. u/s 1(3)(b) of the Payment of Gratuity Act, the said Act is made applicable to every

shop or establishment within the meaning of any law for the time being in force in respect of shops and establishments in a State in which 10 or

more persons are employed or were employed on any day of the preceding 12 months. u/s 14 of the said Act, that Act has been given an

overriding effect. As per the Section, the provisions of the said Act or any rule made thereunder shall have effect notwithstanding anything

inconsistent therewith contained in any enactment other man that Act or in any instrument or contract having effect by virtue of any enactment other

than that Act. Hence the argument is two fold. First it is urged that when Section 1(3)(b) makes the Payment of Gratuity Act applicable only to an

establishment employing 10 or more persons, Section 25 provides that the said Act will apply to a cinema theatre in which 5 or more workers are employed. Learned counsel contends that when the main Act, that is, Payment of Gratuity Act, provides for the applicability with reference to an

establishment employing 10 or more persons, the Act, with which we are now concerned, can not by reference make a different provision, which

is really inconsistent with the provisions in the main Act. We are unable to accept this argument. When Section 25 says that the provisions of the

Payment of Gratuity Act are applicable to a Cinema theatre in which 5 or more persons are employed, it will only mean that the said Section is

carving out a special class of establishment. While the Payment of Gratuity Act applies to all establishments, as contemplated under that Act,

having in its employment 10 or more employees, Section 25 makes a special provision with regard to workers in cinema theatres. Thus Section 25

can be construed as a special enactment, while the provisions in the Payment of Gratuity Act can be construed as a General enactment. The

principle ''special prevails over general'', will automatically apply to this case and therefore there is no inconsistency between the two provisions.

5. The matter can be viewed in a different manner also. Section 25 of the Act can be taken to be bringing in an amendment to the provisions of

Section 1(3)(b) of the Payment of Gratuity Act. After the introduction of Section 25 in the Act in question, the provisions of Section 1(3)(b) of the

Payment of Gratuity Act can be read as ""every shop or establishment in which 10 or more persons are employed and every cinema theatre in

which 5 or more workers are employed"". In other words, the general class is brought in by Section 1(3)(b) and the special class out of that general

clause is brought in by Section 25. Hence there is no inconsistency between the Payment of Gratuity Act and the Act now in question.

6. A question arises, whether the provisions in Section 24 are violative of the principle of equality enshrined in Article 14 of the Constitution. In M.

Vi swanatha Pai v. R.P.F. Commissioner, 71F.J.R.505 a Division Bench of the Kerala Court has held that the Act is not violative of Article 14 and

a specific classification in the legislature being for the benefit of a particular weaker Section of the society, is certainly valid as the classification is

based upon intelligible differential and it has nexus with the object of the classification. The same reasoning would apply in this case with regard to

the provisions of Section 25 of the Act. Hence there is no merit in the contention that the provisions of Section 25 are inconsistent with the provisions of Section 1(3)(b) of the Payment of Gratuity Act.

7. The second limb of the argument is that Section 14 of the Payment of Gratuity Act has an overriding effect and therefore Section 25 of the Act

cannot prevail over the same. We do not accept this contention for three reasons. First we have now held that there is no inconsistency between

the provisions of Section 25 of the Act and Section 1(3)(b) of the Payment of Gratuity Act and hence Section 14 of the latter Act cannot come

into play. Secondly, if as stated by us earlier, the provisions of Section 25 are to be read as an amendment to the provisions of Section 1(3)(b) of

the Payment of Gratuity Act, then it can be treated as part of the said Act and therefore it cannot be said that it forms part of another Act so as to

be subject to the provisions of the Payment of Gratuity Act. Thirdly, a legal fiction is introduced by Sections 24 and 25 of the Act and by virtue of

the said fiction, the workers mentioned in the two sections are deemed to be employees within the meaning of the other two Acts, viz. the

Employees ''Provident Funds and Miscellaneous Provisions Act, 195 2, and the Payment of Gratuity Act. Further, in view of the said fiction, there

is no question of the provisions of the Payment of Gratuity Act having an overriding effect as against the provisions introduced by Sections 24 and

25 of the impugned Act.

8. The next argument advanced by the learned counsel with regard to Section 25 of the Act is that it uses the expression ''every worker''. In fact,

this argument has been advanced by him with regard to the provisions of both Sections 24 and 25. According to the learned counsel, these two

Sections use only the expression ''worker'', whereas the Employees Provident Funds and Miscellaneous Provisions Act and the Payment of

Gratuity Act use the expression ''employee''. Learned counsel contends that when there is no definition of the expression ''worker'', the provisions

of Sections 24 and 25 become unworkable, as it will not be known as to who is a ''worker'' within the meaning of the two Sections. We are unable

to accept this contention. As pointed out already, the two sections contain a legal fiction that every worker of a cinema theatre having 5 or more

workers in its establishment shall be deemed to be an employee within the meaning of the Employees Provident Funds and Miscellaneous

Provisions Act and the Payment of Gratuity Act. Hence an employee within the purview of those two Acts becomes automatically a worker within

the meaning of the impugned Act. Consequently, there will be no difficulty whatever in ascertaining as to who is a worker, contemplated by

Sections 24 and 25 of the impugned Act.

9. We can also tackle the matter by another process of reasoning. It is well known that if an expression used in an enactment is not defined by that

particular enactment, the meaning to be attributed to that expression is the same as is used in common parlance - vide Porritts and Spencer (Asia)

Ltd. Vs. State of Haryana, and Bhogilal Chunilal Pandya Vs. The State of Bombay, . The meaning of the word ''worker'' in common parlance is

too well known to be set out herein. Very often, the term is used as synonym of the word ''employee''. In O.P. Malhotra''s the law of the Industrial

Disputes, Fourth Edition, Vol. I, page 465, it is stated as follows:

The term ''employee'' in Section 4 of the Australian Commonwealth and Arbitration Act has been defined laying more stress on the nexus of the

employee with an industry'' which is as follows:

''Employee means an employee in any industry and includes any person whose usual occupation is that of employee in any industry.''

The expression ''workman'' has also been defined in other statutes such as the Workmen''s Compensation Act, 1923. The other cognate

expressions like ''worker'' and ''employee'' have also been defined in other statutes. For instances Section 2(1) of the Factories Act, 1948 defines

the expression ''worker'' on the construction of which a good bit of case law has developed. Likewise, the expression ''employee'' has been

defined in the State statutes such as the Bombay Industrial Relations Act, the U.P. Industrial Disputes Act, and Payment of Bonus Act, 1965.

10. Learned counsel for the petitioners contend that in labour law the principle that the meaning attributable in common parlance can be used to

understand an expression used in the legislation is not applicable. According to learned counsel, the term ''worker'' has been defined differently in

different enactments. He points out that the expression ''workman'' has been used in the Industrial Disputes Act and it has been defined in a

particular mariner. Similarly the expression ''worker'', has been defined in other enactments in a different manner. Therefore, it is contended that

when the impugned Act uses the expression ''worker'', it cannot be understood in any particular manner unless the Act itself gives the definition.

11. Learned counsel also draws our attention to Section 16 of the impugned Act. He points out that under that Section, the provisions of the

Employees'' Provident Funds and Miscellaneous Provisions Act, 1992 are made applicable to every cine-worker, who has worked in not less than

three feature films with one or more producers, as if such cine-worker were an employee within the meaning of that Act. It is contended that the

expression, ''cine-worker'' has been defined in the Act and therefore there is no difficulty in understanding Section 16 of the Act. An argument is

developed that when the Act has chosen to define the expression ''cine-worker'' and failed to define the expression ''cinema theatre worker'' the

meaning of the word ''worker'' as used in Sections 24 and 25 is not clear at all and therefore the sections are unworkable. We are unable to accept

this argument. The reason for defining the expression ''cine-worker'' in the Act is quite obvious. Unless otherwise proved, it cannot be said

definitely as to who are all the workers and who are all the respective employers in the production of a film. A question will naturally arise whether

an actor, musician, director or dancer is a ''worker'' within the meaning of the Act. Hence the Legislature thought it fit and necessary to define the

expression ''cine-worker'' so that there should not be any confusion in understanding that expression. A special definition is therefore introduced in

the Act with reference to the expression ''cine-worker'', but not in the case of a worker of a cinema theatre. It is not in dispute that cinema theatre

is an establishment. Hence it can be easily found out that an employee of the establishment, viz. cinema theatre, is a worker in that unit.

Consequently, the Legislature did not separately define the word ''worker'', but introduced a legal fiction that whoever is a worker in a cinema

theatre having 5 or more workers is an employee within the meaning of the Employees Provident Funds and Miscellaneous Provisions Act, 1952.

12. We must also point out that the constitutionality of a statute is always presumed and courts must always endeavour to uphold the validity of

statutory provision. It should also be the endeavour of the Court to interpret the legislation in such manner that it is easily workable. The maxim Ut

res magis valet quam pereat will apply. See Commissioner of Income Tax, Delhi Vs. S. Teja Singh, and Avtar Singh Vs. State of Punjab, .

 

13. In State of Bombay v. F.N. Balsara AIR 1951 S.C. 318 the Constitutional Bench referred to the earlier judgment in Chiranjit Lal v. The Union

of India 1950 S.C.R.869 and summarised the relevant principles. In this case, it is sufficient to refer to principles 1 and 2 as set out therein. They

read as follows:

The presumption is always in favour of the constitutionality of an enactment, since it must be assumed that the legislature understands and correctly

appreciates the needs of its own people, that its laws are directed to problems made manifest by experience and its discriminations are based on

adequate grounds.

The presumption may be rebutted in certain cases by showing that on the face of the statute, there is no classification at all and no difference

peculiar to any individual or class and not applicable to any other individual or class, and yet the law hits only a particular individual or class"".

A similar principle has been reiterated in Municipal Corporation of the City of Ahmedabad and Others Vs. Jan Mohammed Usmanbhai and

Another, . It is worth extracting the following passage from the said judgment:

There is always a presumption in favour of constitutionality of an enactment and the burden is upon him, who attacks it, to show that there has

been clear violation of the constitutional principles.

Having regard to the above principles, we hold that Sections 24 and 25 of the Act are valid and they are workable.

14. Now we turn to the notification dated April 30, 1986. The Supreme Court has considered the notification in detail and held that it is not

enforceable in so far as it relates to the period prior to the passing of the notification, viz October 1, 1984 to April 30, 1986 vide The District

Exhibitors Association, Muzaffarnagar and others Vs. Union of India and others, . After a detailed discussion of the question, the court said:

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 employee''s contribution for the period from October 1, 1984 to April 30, 1986.

Following the said judgment, we hold that the writ petitioners are not liable to pay provident fund for the period from October 1, 1984 to April 30,

1986.

15. In view of the orders of stay passed by this Court in these matters, the petitioners had not deducted or collected the employees'' contribution.

If they are now-made to pay from April 1986 to this date, they will not able to realise the employees'' contribution. It is stated by the learned

counsel for the petitioners that several employees have retired and even with reference to the employees who are now in service it will not be

possible to collect the amounts from them and it is also not possible to deduct the contributions from their future wages. It is therefore an eminently

fit case for issuing equitable directions. Insofar as the petitioners in these writ petitions are concerned, they need not make any contribution to the

Employees Provident Funds till the end of November, 1994. They must implement the notification dated April 30, 1986 from December 1994

onwards. In other words, they shall make necessary deductions from the salary payable to the workers from December 1994 as regards the

contribution of the employees and they must also make their contribution from December 1994 onwards.

16. The writ petitions are allowed to the extent indicated above and dismissed in other respects. There will be no order as to costs.

17. In view of the disposal of the main writ petitions, W.M.P.Nos 19116, 21521 to 21523 of 1980; 93, 4392 to 4394, 7292, 11905 of 1987;

19135 & 21770 of 1989; 8848 & 16810 of 1992; 4062, 3369, 3435, 11410, 19215, 20051, 20096, 20103 of 1993; and 3191, 3892, 3893,

7912, 8883, 9712, 10083 and 10726 of 1994 are dismissed.