
(1981) 09 MAD CK 0050

In the Madras High Court

Case No : Writ Petition No. 4595 of 1978

N. Jogie Gounder

APPELLANT

Vs

Regional P.F. Commissioner, Madras

RESPONDENT

Date of Decision : 17-09-1981

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 1(5), 7

Citation : (1983) 1 LLJ 179 : (1982) 95 LW 376

Hon'ble Judges : S. Nainar Sundaram, J

Bench : Single Bench

Judgement

1. The petitioner challenges the proceedings of the respondent, dated 27th September, 1978, under S. 7-A of the Employees' Provident Funds

and Miscellaneous Provisions Act (XIX of 1952), hereinafter referred to as the Act. Earlier to January, 1973, the petitioner was treated as the

employer in relation to an establishment, M/s. Forestdale Estate and Tea Factory, and he was covered by the provisions of the Act/Scheme. On

1st November, 1979, the Tea Factory was closed down for some time and it was sub-sequently sold to one Smt. Janaki Soundararajan in

January, 1973. Practically, there was a disruption of the integrity of the establishment on the sale of the Factory to and in favour of the third party,

Smt. Janaki Soundararajan. So far as the Tea Factory is concerned, the provisions of the Act/Scheme have been applied to it since they are

factually attracted to it. The respondent wanted to apply the provisions of the Act/Scheme to the Forestdale Estate, which alone has come to be

manned and managed by the petitioner pursuant to the split in January, 1973. The petitioner contended that the employment strength of the

Forestdale Estate is less than 20 and the provisions of the Act/Scheme would not

be attracted and hence there need not be any determination

under S. 7-A of the Act. This stand of the petitioner was not accepted by the respondent and the respondent held that the provisions of the

Act/Scheme would continue to apply to the Forestdale Estate, which alone is being manned and managed by the petitioner and the respondent

passed the impugned order, dated 27th September, 1978 directing the petitioner to pay the amount determined in the said order.

2. Mr. K. Venkataraman, learned counsel appearing for the petitioner would submit that the integrity of the original establishment has been

disrupted by the sale of the Tea Factory to and in favour of the third party, Smt. Janaki Soundararajan and thereafter the Forestdale Estate, which

alone is being manned and managed by the petitioner cannot come within the category of establishment under the Act, since the employment

strength in the said establishment is less than 20. The fact that the employment strength in the said establishment is less than 20 was not disputed

and is not being disputed by the respondent. There is no rule that could be spelt out from the provisions of the Act that an establishment covered

by the Act/Scheme cannot be split-up, and in spite of such split-up, the Act/Scheme which was earlier applied to the original establishment will

continue to apply to the split-up entities even though each or all of them would not come within the category of establishments to attract the

provisions of the Act/Scheme. A disruption of the establishment is possible and if the disruption is real and bona fide then the test that has got to be

applied is to find out as to whether the split-up establishments will be independently covered by the provisions of the Act/Scheme. If the disruption,

by whatever manner it is effected, is a ruse or a camouflage to go out of the ambit of the provisions of the Act/Scheme then it will be legitimately

ignored :

3. My attention has been drawn to sub-s. (5) of S. (1) of the Act and it reads as follows :

An establishment to which this Act applies shall continue to be governed by this Act notwithstanding that the number of persons employed therein

at any time falls below twenty.

To say that an establishment to which the Act applied shall continue to be governed by the Act, even though the number of person employed

therein subsequently falls below twenty, pre-supposes the continuation of the establishments as an integral whole. But, when the integrity of the

establishment gets split-up and if such splitting up is real and bona fide then the relevant question that has got to be posed for answer is as to

whether the split-up establishments are individually governed by the Act/Scheme. This be the ratio that should be followed whenever there is a

disruption in the integrity of the establishment. In Mohammed Kutti (K.M.) Vs. Regional Provident Fund Commissioner and Others, , a Division

Bench of the Kerala High Court dealt with a case of a partition and held if the partition is real and bona fide and if it disrupted the integrity of the

establishment and created separate establishments employing less than twenty persons, then the Act will not apply. The decision of the Division

Bench has been approved by the Full Bench of the Kerala High Court in T. A. Zainulabdeen v. Regional Provident Fund Commissioner, Kerala,

(1975) Lab. I.C. 412.

4. In the present case, as stated above, there is no dispute that the Forestdale Estate, which alone has been retained, manned and managed by the

petitioner employs less than twenty persons. Equally so, it is not urged by the respondent that the split-up of the original establishment by the sale

of the Tea Factory to the third party is sham and nominal and is not real and bona fide. If this is so there is no warrant to attract the provisions of

the Act/Scheme to the said Estate. The legal and factual position being clear as above, I am not able to sustain the order passed by the respondent

and this obliges me to interfere in writ proceedings and accordingly, the writ petition is allowed and the order of the respondent will stand quashed.

There will be no order as to costs.