

(1959) 07 KAR CK 0001

In the Karnataka High Court

Case No : Criminal Revision Petition No. 89 of 1959

Pamadi Subbarama Chetty

APPELLANT

Vs

Mirza Zewar Ali

RESPONDENT

Date of Decision : 23-07-1959

Acts Referred:

Employees Provident Fund and Miscellaneous Provisions Act, 1952 — Section 14, 14 (2)

Citation : AIR 1960 Kar 14 : (1960) CriLJ 253 : (1959) ILR (Kar) 529

Hon'ble Judges : H. Hombe Gowda, J

Bench : Single Bench

Judgement

(1) This revision petition is directed against the judgment dated 17-2-1959 of the City Magistrate, Bangalore in Criminal Case No. 5462 of 1958, convicting the petitioner for an offence under paragraph 76 of the Employees' Provident Fund Scheme read with S. 14(2) of the employees' Provident Funds Act and sentencing him to pay a fine of Rs. 50/- and in default to suffer simple imprisonment for fifteen days.

(2) The facts of the case briefly stated are as follows: The petitioner was one of the two partners of a partnership firm run under the name and style of Sri Rama Weaving Shed which was engaged in manufacturing silk good. This firm was in existence at the time the Employees' Provident Funds Act, 1952 (Act XIX of 1952) came into force on 1-11-1952. The factory had employed more than fifty persons and therefore the Act automatically applied to the same. The rules framed under the Employees' Provident Funds Act case a duty on every employer of a factory to which the Act was made applicable to submit returns in the prescribed forms; permit the inspection of the registers kept in the factory and to contribute his share of the provident fund of the employees to the account of the Provident Fund Commissioner.

Accordingly the manager of the firm of the petitioner remitted the amount of the employer's share of the provident fund regularly till 10-2-1956. The partnership firm was dissolved on 10-2-1956. It is stated that it was so dissolved since the

firm was working under loss. The dissolution of the firm is evidenced by a registered agreement entered into between the parties. The assets and the liabilities of the firm were divided between the two partners of the firm, namely, the petitioner and Sri Anan hasubramanya Iyer. Thus the firm ceased to exist from 10-2-1956. This fact was duly intimated by the two partners to all those concerned including the Provident Fund Commissioner immediately after the dissolution.

On receipt of this information the Provident Fund Commissioner disbursed the provident fund to all the employees of the firm. Some pieces of machinery including few looms which were being used for manufacturing silk goods and which had fallen to the share of the present petitioner were lying idle in a portion of the premises of the old factory. In January 1957 the petitioner re-started his business of manufacturing silk goods in a portion of the premises making use of these looms. He employed less than twenty labourers in his new factory.

It is stated that none of the employees that were working in the old firm are among these twenty employees. On 20-8-1958 the Regional Provident Fund Commissioner in Mysore, Bangalore called upon the petitioner by means of a notice to show cause as to why legal action should not be taken against him under S. 14 of the Employees' Provident Funds Act, 1952 and paragraph 76 of the Scheme framed thereunder for having failed to submit returns in Forms Nos. 2, 3, 5, 6, 9, 10 and 12 as required by the Employees' Provident Funds Scheme, 1952 with effect from 1-1-1957, in spite of repeated reminders and personal contacts made by the Provident Fund Inspector and for having failed to remit the provident fund contributions and administration charges for the period from January 1957 to the date of the notice.

The petitioner sent a reply to the said notice. He stated therein that his factory was an infant industry as defined in the employees' Provident Funds Act; that it had no manner of connection with the old factory which was a partnership firm and which Rama Weaving Shed; and that all the workmen of the old factory who were originally covered by the Employees' Provident Funds Scheme had all been discharged with effect from 10-2-1956 after disbursing the provident fund due to them.

The petitioner further stated that he started the new business in a portion of the premises and making use of the machinery that had fallen to his share from 1-1-1957 and had employed less than twenty labourers in the same and he was, therefore, not liable to submit any returns nor to pay any contributions and administration charges. The respondent refused to accept the contention of the petitioner that the new factory was an "infant industry" and that the petitioner was entitled for exemption from the operation of the employees Provident Funds Act, 1952. He, therefore, approached the Provident Fund Commissioner in Mysore to obtain sanction of the Government for proceeding against the petitioner under S. 14 of the Employees' Provident Funds Act, 1952 and Paragraph 76 of the Employee' Provident Funds Scheme, 1952.

The Regional Provident Fund Commissioner accordingly, wrote to the Government and obtained the sanction to prosecute the petitioner. A charge-sheet was accordingly placed by the respondent against the petitioner before the City Magistrate, Bangalore for an offence under Paragraph 76 of the Employees' Provident Funds Scheme, 1952 read with S. 14 of the Employees' Provident Funds Act, 1952. The petitioner who appeared before the Magistrate in response to the notice pleaded not guilty to the charge which was read over and explained to him.

He reiterated his stand that he was not liable to contribute towards the provident fund as his factory was an infant industry and had not employed more than twenty workmen. The respondent examined himself to substantiate his case that the petitioner was running a factory under the name and style of Sri Rama Weaving Shed; that the original firm had been covered by the Employees' Provident Funds Act, 1952 and that from 1-1-1957 the petitioner had failed to remit his quota of the provident fund contributions and the administration charges in spite of repeated reminders.

The petitioner examined one witness on his behalf to substantiate his contention that the original firm which was a partnership firm ceased to exist on and from 10-2-1956 as the same was dissolved by an agreement entered into between the partners; that some looms and other machinery which were the assets of the old firm had fallen to his share; that he had kept these goods idle till about January 1957 and started a new Factory with only 18 employees and that the new Factory had nothing to do with the old one which was being run by a firm. The defence witness further asserted that the petitioner had no intention to defeat the rights of his employees at any time.

The learned Magistrate accepted the statement of the petitioner that the dissolution of the partnership firm on 10-2-1956 was a genuine one and that it had not been effected by the petitioner with the ulterior object of defeating the claims of any of the employees and shirk his liability to contribute towards their provident fund. But he was of the opinion that since the Factory of which the petitioner was a partner was covered by the Employees' Provident Funds Act, 1952 and the new factory started by the petitioner continued to be covered by it. According to the learned Magistrate the liability which had fastened itself on the old Factory revived itself immediately after the petitioner started the new factory even though less than twenty workmen are employed in it and therefore, the claim of the petitioner for exemption from the liability on the ground that the new factory was an infant industry was untenable.

He accordingly rejected the contention put forward on behalf of the petitioner that the firm of which the petitioner is now the proprietor was a new or an infant industry and that the liability that was attached to the old firm did not extend to the new firm and found the petitioner guilty of disobedience under Paragraph 76 of the Employees' Provident Funds Scheme, 1952 framed under the Employees' Provident Funds Act read with S. 14 of the Act and convicted and sentenced him

to pay a fine of Rs. 50/- and in default of payment of fine to suffer simple imprisonment for fifteen days. The correctness simple imprisonment for fifteen days. The correctness and legality of this order of conviction are challenged in this revision petition.

(3) Sri E. S. Venkataramiah, the learned Counsel for the petitioner, strenuously urged that in the state of evidence on record and in the absence of any suggestion by the prosecution that the absence of any suggestion by the prosecution that the dissolution of the partnership from on 10-2-1956 was a deliberate attempt on the part of the petitioner at resorting to a subterfuge in order to defeat the law and deny the benefit of the provident fund to the workers, the learned City Magistrate was not justified in reaching the conclusion that the factory started by the petitioner in January 1957 is a continuation of the factory which was being run by the dissolved firm.

(4) It is not disputed that Shri Rama Weaving Shed to which the Employees' Provident Funds Act was made applicable was a partnership firm; that the petitioner was one of the partners of that firm; that the said factory had employed more than fifty workers on the date on which the provisions of the Act were made applicable and that the Manager of the factory submitted the returns and remitted the employer's share of the provident fund for the benefit of the labourers to the account of the Provident Fund Commissioner till 10-2-1956. The petitioner had in the reply to the notice that was issued to him as per the original of Exhibit P-1 stated that because the partnership firm was working under loss, the partners dissolved the same on 10-2-1956 and that the fact that the partnership firm was being so dissolved and the Factory run by the firm was being closed on and from 10-2-1956 was intimated to the Registrar of firms, the Labour Commissioner in Mysore and the Provident Fund Commissioner. He also stated that the Provident Fund Commissioner had disbursed the provident fund to all the employees of the firm at the request of the employees of the firm at the request of the employees of the firm at the request of the employers immediately thereafter. It is in evidence that all the employees who were in the employment of the old factory were accordingly paid their dues up to 10-2-1956 and were discharged after due notice of the closure of the factory.

(5) There is absolutely nothing on record to disbelieve the above statements of fact made by the petitioner. As a matter of fact, the Inspector of Employees' Provident Fund who is examined is P. W. 1 in the case, has admitted in the course of his evidence that he investigated into the facts stated in Exhibit P-1 and learnt that the partnership firm had been dissolved on 10-2-1956. In other words the statement of the petitioner that the partners divided the assets and the liabilities of the firm including the machinery is not at all challenged by the prosecution.

The petitioner has been throughout contending that the looms and other machinery that he got for his share were lying idle after the Factory run by the firm was closed and that he started the new factory in a portion of the premises

under the old name and style on 1-1-1957 and that there are less than twenty workmen employed in his new factory. These statements of the petitioner are not as already stated denied by the prosecution. In these circumstances the question for consideration is whether the contention of the respondent that the business started by the respondent that the business started by the petitioner long after the dissolution of the partnership firm on 10-2-1956 is a continuation of the old firm and attracted the application of the provisions of the Employee Provident Funds Act and the Scheme framed thereunder: is correct.

(6) As already stated above no suggestion or allegation was made on behalf of the prosecution that the dissolution of the partnership firm on and from 10-2-1956 was a deliberate attempt on the part of the partners to a subterfuge in order to defeat the claims of the workers. The workmen of the dissolved firm had at no time lodged any complaint to any of the authorities concerned to this effect. No evidence is adduced by the prosecution to establish that the petitioner closed the old factory with the ulterior object of denying the benefit of the provident fund and that the new factory is but the continuation of the old one.

In the absence of such a proof I do not think that it is fair to attribute mala fides to the petitioner and to reach the conclusion that the closure of the old factory and starting of the new one by the petitioner is an attempt at resorting to a subterfuge in order to defeat the provisions of the Employees' Provident Funds Act. The learned City Magistrate is of the opinion that once the employees' Provident Funds Act and the Scheme framed thereunder were made applicable to a factory, they continue to govern the occupier of the said factory even after it is closed. In other words, he is of the opinion that the liability is fastened to the employer even after the closure of the factory and will automatically revive itself when he starts a new factory even though he may do so many years after the closure of the old factory.

The learned Magistrate placed strong reliance on a decision of the Bombay High Court in *The State Vs. Hathiwala Textile Mills and Others*, and held that once a factory was covered by the Employees' Provident Funds Act and the Scheme framed thereunder, it will continue to be controlled by it under all circumstances. It is no doubt true that some observations made by Their Lordships in that case in a way appear to support the conclusion reached by the learned Magistrate. But the decision in that case that the provisions of the Employees' Provident Funds Act continued to govern the factory in spite of some changes, was based on the facts proved in that case.

The facts of that case were, that Hathiwala Textile Mills to which the Employees' Provident Funds Act was made applicable, which had more than fifty workers working had two departments, namely, the Weaving Department and the Engineering Department. It closed the Weaving Department and retained only the Engineering Department with the result the number of workers in the Mills fell below the figure fifty. The occupiers of the Mills thought that the workers who continued to work in the factory would no longer be entitled to the benefits under

the Employees" Provident funds Scheme and requested the Regional Provident Fund Commissioner to exempt them from the operation of the employees" Provident Funds Scheme.

The Provident Fund Commissioner wrote back to the Mills to the effect that once a factory was covered under the Act it remained so covered to so far as the Central Provident Fund was concerned, no matter the number of employees ran below fifty and therefore, the request of the Mills to exempt them from the operation of the Employees" Provident Funds Act cannot be granted. In spite of this letter the Mills failed to submit returns and to remit the share of the contribution and the administrative charges. Subsequently the Mills came to be in the custody of the Receivers on account of insolvency proceedings having been started by some of the creditors. Since the employees has failed to remit their share of the provident fund and the administrative charges and submit the returns as required under the provisions of the Employees" Provident Funds Act and the Scheme thereunder, a prosecution was launched against them.

The employers contended that after the number of employees to their concern ran below fifty, the provisions of the Employees" Provident Funds Act automatically ceased to apply and therefore, they had not committed any offence punishable under Paragraphs 76(a) and (c) of the Employees" Provident Funds Scheme read with S. 14 of the Employees" Provident Funds Act, 1952. The trial Magistrate accepted this contention and acquitted the employers. The State preferred an appeal to the High Court of Bombay against the decision of the learned Magistrate.

The learned Judges of the Bombay High Court held in the circumstances proved in that case that because one of the departments of the factory was discontinued on a particular date and consequently the number of employees fell below fifty, it cannot reasonably be urged that the benefit that had accrued to other employees of the factory which continued to exist was taken away and held that the Act was applicable. That is not the situation in the present case. As already stated, the fact that the partnership firm was dissolved on 10-2-1956 and immediately thereafter the old firm ceased to exist cannot be and is not disputed before me.

It is also clear that the petitioner started a new factory on and from 1-1-1957 of course with the machinery that had fallen to his share under the name and style of Sri Rama Weaving Shed and in a portion of the premises, but these things cannot make the new factory part and parcel of the old factory. It cannot reasonably be urged that the present factory is a continuation or a branch or a sub-division of the old factory.

(7) It was contended by Sri Govindarajulu, the learned Counsel for the respondent that once the provisions of the Employees" Provident Funds Act and the Scheme framed thereunder are made applicable to the factory, the liability to pay the employers" share of the provident fund is fixed to the machinery that was originally urged for manufacturing purposes in the premises is made use of

in another factory, be it in the same premises or in a separate premises, the person who uses such machinery subjects himself to the liability of paying his share of the provident fund irrespective of the fact whether he has employed any of the employees that were previously in the service of the old factory or the number of employees is below fifty. I am unable to accept this contention.

If this argument is accepted it will lead to absurdity. There is no provision in the Employees' Provident Funds Act which says that it is the machinery used in the factory that is subject to the liability. To hold that any person that purchases a machinery from a factory to which the provisions of the Employees' Provident Funds Act and the Scheme framed thereunder had been made applicable, will be subject to the liability if he starts a new factory with the use of the same, irrespective of the fact that the number of employees employed by him is less than fifty appears to me ridiculous. It is further urged by the learned counsel for the respondent that if one of the partners of the old firm starts a new business, as in this case, with a part of the machinery that fell to his share I should be presumed that the new factory is part of the sub-division of the old factory and therefore is liable to contribute towards the provident fund of the employees irrespective of the fact that the number of employees in the new firm started by him is less than fifty. If the Legislature really intended that such consequences should follow, a provision to that effect should have been made in the enactment. No such provision is pointed out to me by the learned Counsel for the respondent.

(8) It is next urged by Sri Govindarajulu the learned Counsel for the respondent that the Employees Provident Funds Act is a social legislation enacted to improve the conditions of workers and Courts must, if necessary, strain the language of the Act in order to achieve the purpose which the Legislature had in enacting it. In support of this branch of his argument he placed strong reliance on the following observations of His Lordship Sri Chagla, Chief Justice of Bombay in *J.G. Vakharia Vs. Regional Provident Fund Commissioner*, :

"Mr. Vimadalal urged upon us that although the transaction may look odd--and he has describing it rather mildly even so if legally five units Act, then no liability should be imposed upon them merely because the court may not approve the manner in which the transaction was effected. It is well settled canon of taxation law that a subject is entitled to avoid paying tax if legally he can do so. Even that canon is looked at rather askance in the context of times that we are living in, but the Act that we are dealing with is not a taxation law. It is a social legislation and the canon of construing a social legislation is very different from the canon of construing a taxation law. The Court must not any subterfuge which would defeat the provisions of a social legislation and the court must even if necessary strain the language of the Act in order to achieve the purpose which the legislature had in placing this legislation on the statute book. Therefore, not only the Court must disapprove all subterfuges to defeat a social legislation but must actively try to prevent such subterfuges succeeding in their object."

The facts of the case before Their Lordships of the Bombay High Court were such that they left no doubt in their minds that it was clearly a case in which deliberate attempt had been made by the employers to avoid their liability to contribute towards the provident fund of the employees. It had been satisfactorily established that the employers had divided the running factory to which the Employees' Provident Funds Act was made applicable into five separate units as a subterfuge to avoid the liability of contribution under the Act. It is in those circumstances that the learned Chief Justice made the above observations.

I am unable to accept the contention of Sri Govindarajulu that the learned Chief Justice, while making those observations meant that the Courts should give an extended meaning to the particular provision of the Employees' Provident Funds Act. It is no doubt true that Legislature has put the Employees' Provident Funds Act on the Statute book primarily for the benefit of the employees and that the provisions of the enactment must receive a liberal construction at the hands of the Court. But at the same time we should not, unless we are compelled to do so by the clear language used in the Act, put any construction which will lead to absurdity. Courts should not in the guise of liberal construction assume the role of Legislature. I may in this connection usefully refer to the following observations of Their Lordships of the Supreme Court in *Muir Mills Co. Ltd. Vs. Suti Mills Mazdoor Union, Kanpur* :

"The considerations of social justice imported by" the labour Appellate Tribunal in arriving at the decision in favour of the respondent were not only irrelevant but untenable. Social justice is a very vague and indeterminate expression and no clear-cut definition can be laid down which will cover all the situations. Mr. Isaacs, the learned Counsel for the respondent, attempted to give a definition in the following terms.... and he stated that there were three parties concerned here, viz., the employers, the labour and the State itself and the conception of social justice had to be worked out in this context. Without embarking upon a discussion as to the exact connotation of the expression "social justice" we may only observe that the concept of social justice we may only observe that the concept of social justice does not emanate from the fanciful notions of any particular adjudicator but must be founded on a more solid foundation."

In my opinion conceptions of social justice should not be imported while interpreting the provisions of the Employees' Provident Funds Act. The provisions of the Employees' Provident Funds Act should be interpreted as they stand keeping in mind that there are always two parties to the dispute. The Courts should not, in the guise of excluding the benefits of social legislation strain the language of the enactment beyond reasonable limits.

(9) The learned City Magistrate has also relied upon a decision of the Kerala High Court reported in *Kunnath Textiles Vs. Regional Provident Fund Commissioner* . The facts of that case were as under: In January 1949 seven brothers formed a private limited company with one of the brothers as the Managing Director and

started a textile factory. The company took the factory on lease and worked it till 1-11-1953 when it surrendered the lease. The provisions of the Employees' provident Funds Act were applied to the factory while it was being run by the Eastern Agencies Ltd., and that company was contributing the Employees' provident Fund as required by the Act and the Scheme framed thereunder.

On the termination of the lease of the company, the seven brothers formed themselves into a partnership which they called the "Kunnath Textiles" and they took over the factory which they continued to run with the same employees making the same goods and with no change, whatsoever, as to its character. It is in those circumstances, that their Lordships held that the contention of the employers that the business that they started from 1-11-1953 was a new business and therefore, an infant industry and they were not liable to contribute towards the provident fund of the employees was untenable. This decision of the Kerala High Court does not lent any support to the contention of the respondent.

(10) After carefully examining the facts and circumstances of this case I am clearly of the opinion that there was absolutely no justification for the learned Magistrate to assume that the petitioner started the new factory to defeat the claims of his employees to the advantage of the provident fund. Equally there was no justification for the learned magistrate to hold that the new concern of the petitioner is not an infant factory and that the petitioner was liable to answer a charge for having failed to contribute towards the provident fund of the employees and the administrative charges and the employees and the administrative charges and to submit the returns under Paragraph 76 of the Employees' provident Funds Scheme read with S. 14 of the Employees, provident Funds Act, 1952. In the state of the evidence on record the conviction of the petitioner cannot be supported and is liable to be set aside.

(11) In the result, therefore, this revision petition is allowed. The conviction and sentence passed against the petitioner are set aside and the petitioner is acquitted.

(12) Conviction and sentence set aside.