

(1997) 07 KAR CK 0035
In the Karnataka High Court
Case No : Writ Petition No. 11416 of 1990

Purex Laboratories India (P) Ltd., Bangalore

APPELLANT

Vs

Regional Provident Fund Commissioner, Bangalore and
another

RESPONDENT

Date of Decision : 25-07-1997

Acts Referred:

Constitution of India, 1950 — Article 226

Employees Provident Fund and Miscellaneous Provisions Act, 1952 — Section 1 (3) (a),
2 (e) (i)

Citation : (1997) 4 KarLJ 677 : (1998) 1 LLJ 78

Hon'ble Judges : G. Patri Basavana Goud, J

Bench : Single Bench

Judgement

1. The point for consideration is as to whether an establishment covered under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (Act for short) can ever come out of the purview of the Act at all, and if so, in what circumstances and from what date.

2. The petitioner establishment had been covered under the Act. It closed the manufacturing activities with effect from September 7, 1988. The last of its employees left the establishment with effect from April 21, 1989. The petitioner, therefore, contended that the establishment itself having been closed down and not even a single employee being there, the establishment no longer continues to be covered under the Act. The respondent-Provident Fund Authorities, however, contend that, once an establishment gets covered under the Act, there is no way the provisions of the Act would cease to apply to the said establishment. The respondent contends that even if the coverage stopped, in the sense the number of employees fell below 20, the establishment is required to continue to submit Nil returns, as also to pay administrative charges. A communication conveying this meaning was issued by the respondents to the petitioner on May 4, 1990 at Annexure-E. In this writ petition under Article 226 of the Constitution, petitioner seeks quashing of the said Annexure E.

3. The facts are not in dispute. Petitioner had been covered under the Act. While the manufacturing activities were stopped w.e.f. September 7, 1988, it is submitted at the Bar that only one employee remained to attend to post closure matter and that, even the said employee led the service w.e.f. April 21, 1989, so much so, that, from that date onwards, not a single employee being there and the establishment itself having already been closed down, there was nothing that left to be applied with, in terms of the provisions of the Act.

4. Section 2(e)(i) of the Act inter alia defines an "employer" meaning the owner or occupier of a factory.

5. Section 2(f) of the Act inter alia defines an "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.

6. Section 2(g) of the Act defines "factory" as meaning any premises, including the precincts thereof, in any part of which a manufacturing process is being carried on or is ordinarily so carried on, whether with the aid of power or without the aid of power . We are concerned herein with a factory that had been engaged in manufacturing process.

7. Section 1(3)(a) of the Act provides that subject to the provisions contained in Section 16 (with which Section 16, we are not concerned herein), the Act applies to every establishment which is a factory engaged in any industry specified in Schedule I and in which twenty or more persons are employed.

8. Section 1(5) of the Act provides that an establishment to which the Act applies shall continue to be governed by the Act notwithstanding that the number of persons employed therein at any time falls below twenty.

9. Paragraph 36(2) of the Employees' Provident Funds Scheme, 1952 (Scheme for short) runs thus :

(2) Every employer shall send to the Commissioner within fifteen days of the close of each month a return :-

(a) in Form 5, of the employees qualifying to become members of the fund for the first time during the preceding month together with the declarations in Form 2 furnished by such qualifying employees, and

(b) copy of Wages Payment Register, of the employees leaving service of the employer during the preceding month :

Provided that if there is no employee qualifying to become a member of the fund for the first time or there is no employee leaving service of the employer during the preceding month, the employer shall send a "Nil" return."

10. Paragraph 38(1) inter alia provides for payment of administrative charges by an establishment and Paragraph 38(2) runs thus :

"(2) The employer shall forward to the Commissioner within twenty-five days of the close of the month, a copy of the Wages Payment Register for the month showing the amount recovered from the wages of each employee towards the Provident Fund, the account number thereof, the amount contributed by the employer to such fund, the code number of the employer and the rate of contribution to the fund :

Provided that in case no such recoveries have been made from an employee, the employer shall show "Nil" and reasons thereof.

Provided further that in the case of an employee who has become a member of the Family Pension Fund under the Employees' Family Pension Scheme, 1971, the aforesaid copy shall also contain the amount recovered towards Family Pension Fund, the account number thereof and the amount contributed by the employer to such fund."

11. Upto September 7, 1988, the petitioner was an establishment, in the sense, it was a factory engaged in the manufacturing process, employing more than 20 employees. There was an employer viz., the petitioner, represented by its Managing Director. There were employees also. Petitioner, therefore, rightly stood covered under the Act. On September 7, 1988, the manufacturing process came to an end, but, at least, one employee continued to look after the post-closure affairs of the petitioner-establishment. In that way, there was the petitioner employer and there was an employee who had been working in connection with the work of the establishment and getting wages in that regard within the meaning of Section 2(f) of the Act. This was till the last employee left on April 21, 1989. Till that day, therefore, even though there was only one employee, even though the number of employees, therefore, fell below 20 the petitioner, nevertheless continued to be covered under the Act with an obligation to send the requisite returns both under Paragraphs 36 and 38 of the Scheme, as also to pay the administrative charges under Paragraph 38(1) as determined under Paragraph 39. Upto this point, there is no dispute between the petitioner and the respondents. It is only with regard to the position thereafter that the parties are at dispute. What the respondent contends is that, once the Act becomes applicable to an establishment, there is no way it would cease to apply. What the petitioner contends is that, there is neither an establishment nor an employer nor an employee after April 21, 1989 and as such, it would be futile for the authorities to contend that non-existing establishment should continue to be covered under the Act. The Bombay High Court had an occasion to deal with this aspect in *V. Venkatesh Vs. Union of India and others*, . The Bombay High Court pointed out that there is no provision in the Act which deals with cessation of its application and that, when a statute sets out the requirements for its application but not for the cessation of its application, it must be held that once it applies, it continues to apply. Having so held, the Bombay High Court, nevertheless, on the facts of the case being dealt with by it, held thus : On July 10, 1969, the factory concerned came to be permanently closed down. One employee however

continued upto May 1974. When his services also were terminated, the Bombay High Court on these facts, held that the Act continued to apply to the establishment concerned even after July 10, 1969, but, until May 1974. I agree with the view taken by the Bombay High Court.

12. For compliance with the provisions of the Act and the Scheme, the least that are to be required to be in existence are an establishment, an employer and one or more employees. If number of employees are more than 20, the act commences to apply. Thereafter, even if the said number falls below 20, the Act continues to apply. But, by virtue of sub-section (5) of Section 1, while saying so, it would convey meaning only if there exists at least one employee. Even where there is not a single employee left in the establishment, it would be difficult to take recourse to Section 1(5) of the Act to contend that the Act continues to apply.

13. Sri Harikrishna S. Holla, learned Counsel for the respondents, refers to Paragraphs 36(2) and 38(2), requiring Nil returns to be submitted by an employer. Reference to the said provisions in this context is inappropriate. I have extracted both Paragraphs 36(2) and 38(2). Clause (a) of sub-paragraph (2) of Paragraph 36 of the Scheme deals with the return to be submitted with regard to employees qualifying to become members for the fund for the first time during the preceding month. Clause (b) thereof deals with a form to be submitted in respect of employees leaving services of the employer in the preceding month. Proviso thereto stipulates that, if there is no employee qualifying to become a member in terms of clause (a) or if there is no employee leaving services for the preceding month in terms of clause (b), then, the employer should send a Nil return.

14. In a case like the present one, we are neither concerned with employees qualifying to become members of the fund for the first time or the absence of such employees during a particular month, nor are we concerned with the employees leaving the services during the preceding month or the absence of such employees. We are here concerned with a case wherein, on a particular day, there is neither an establishment nor an employer nor an employee. Similarly, Paragraph 38(2) requires an employer to submit a monthly consolidated statement showing recoveries made from the wages of each employee provided that, if no such recoveries have been made from the employees, a Nil return is required to be submitted. Here again, it contemplates there being an establishment, an employer and employees, or at least one employee, where a Nil report is to be submitted if no recoveries are made. In the present context, neither Paragraph 36(2) nor Paragraph 38(2) would be applicable. Similarly, reference to payment of administrative charges in terms of Paragraphs 38(1) and 39 is also inappropriate, because, the very administrative charge is required to be of such percentage of the pay being payable to the employees as required by Paragraph 38(1). If there are no employees at all and if no wages are being paid, there is hardly any basis for computation of the said percentage.

15. Though, as pointed out by the Bombay High Court, there is no provision under the Act which deals with cessation of its application, and though Section 1(5) of the Act is normally taken recourse to, to contend that the Act would continue to apply, in my opinion, such continued application would require at least three aspects viz., an establishment, an employer and at least one employee. After September 7, 1988, even though the manufacturing process came to an end, the establishment continued with an employer and one employee who was to attend to post-closure affairs and which work was, therefore, in connection with the establishment, which the said employee was doing for wages being paid by the petitioner-employer. Therefore, the Act continued to apply and, either contributions were required to be made or Nil return had to be submitted depending upon the application of the relevant provisions of the Act and the Scheme. This had to be done upto April 21, 1989. After April 21, 1989, there was neither an establishment nor an employer nor an employee, even the last of the employees having left on that day. There is, therefore, no point in saying that the Act would continue to apply. As pointed out by the Bombay High Court, even if there is no provision for cessation of application of the Act, any continued application of the Act beyond April 21, 1989 would be in vacuum. It can, therefore, be only theoretically said that the Act continues to apply just because there is no provision in the Act with regard to cessation of its application. In practice, however, there is no way the applicability of the Act to a non-existing establishment where there is neither an employer nor an employee, which could be thought of. Any interpretation that would only be theoretically correct, but practically impossible to be put into practice, would be of no avail. It, therefore, must be concluded that, from April 21, 1989, the petitioner was under no obligation to be continued under the provisions of the Act. The respondents' contention to the contrary as at Annexure-E, therefore, cannot be legally sustained.

16. Petition is allowed, Annexure-E is quashed.