(1978) 12 MAD CK 0002

In the Madras High Court

Case No : Writ Petition No. 3412 of 1976

Raghuram Textiles APPELLANT

Vs

The Regional Provident Fund Commissioner RESPONDENT

Date of Decision : 15-12-1978

Acts Referred:

Constitution of India, 1950 — Article 226
Employees Provident Fund and Family Pension Act, 1952 — Section 1(3), 16, 19A, 2, 3

Citation : (1980) ILR (Mad) 318

Hon'ble Judges : Natarajan, J

Bench : Single Bench

Advocate : M.R. Narayanaswami, for the Appellant; Radha Srinivasan, Additional Central Government Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

Natarajan, J.—The Petitioner seeks a writ of prohibition or any other appropriate writ to prohibit the Respondent from proceeding with an

enquiry initiated by him u/s 7-A of the Employees'' Provident Funds and Family Pension Fund Act, 1952 (herein-after referred to as the Act) till

the disposal of the Petitioner''s application u/s 19-A of the Act to the Central Government.

2. The Petitioner is engaged in the manufacture of hand-woven textiles of various varieties. The Petitioner wanted to cover its employees under the

Act and, for that purpose, had a dialogue with the Provident Fund Inspector, Tirupur, who visited its factory. The said officer noticed that the

regular employees engaged by the Petitioner were less than the minimum number prescribed by the Act for coverage and opined that the Petitioner

can opt for coverage of its employees under the Act on a voluntary basis. In accordance with that advice the Petitioner has been making contributions under the Act for its employees on a voluntary basis with effect from 1st August, 1972. While so, the Provident Fund Inspector,

Tirupur, informed the Petitioner on 8th April 1976 that weavers engaged in producing hand-woven textiles for the Petitioner should also be

considered as employees and they should also be covered under the Act. In spite of the Petitioner pointing out that the weavers were not

employees within the meaning of the Act and this position had all along been accepted by the Department the Respondent, to whom the matter

was referred, issued summons to the Petitioner to produce the records and attend an enquiry u/s 7-A of the Act. At once the Petitioner submitted

a petition to the Central Government u/s 19-A of the Act to give a finding that the Petitioner has not employed the requisite number of employees

to attract the operation of the Act. In view of the petition u/s 19-A, the Petitioner requested the Respondent to postpone the enquiry u/s 7-A till the

finding of the Central Government is received, but the Respondent has not accepted the representation and, as such, the Petitioner apprehended

the possibility of the Respondent proceeding ex parte with the enquiry u/s 7-A and passing adverse orders. It is in that state of affairs, the

Petitioner has invoked the jurisdiction of this Court under Article 226 of the Constitution of India, for a writ of prohibition.

3. A detailed counter-affidavit has been filed by the Respondent and therein, the various averments of the Petitioner are controverted. According

to the Respondent, the Provident Fund Inspector, Tirupur, inspected the Petitioners'' establishment on 8th April, 1976 and found that weavers

working therein had not been enrolled as Employees'' Provident Fund members and therefore, he wanted the Petitioner to produce the relevant

records for his inspection. Since the Petitioner did not produce the records but raised a contention that the weavers were not employees within the

meaning of the Act and as such, they were not entitled to coverage under the Act, the Provident Fund Inspector referred the matter to the

Respondent and it was in terms of the reference, the Respondent had called upon the Petitioner to attend an enquiry u/s 7-A of the Act. The

enquiry u/s 7-A would take within its ambit the question of liability of the Petitioner under the Act in respect of weavers and as such, the pendency

of a petition u/s 19-A to the Central Government will not be a bar for determining their dues u/s 7-A of the Act. The counter then proceeds to say that according to the ratio laid down in New Street Textiles Vs. Union of India (UOI), and Hindustan Durry Factory, Ambala City v. Regional

Provident Fund Commissioner, Chandigarh Civil Writ No. 3005 of 1972 High Court of Punjab & Haryana, the term employee as defined in

Section 2(f) the Act is wide enough to embrace even casual and piece-rated employees. Reference is also made in the counter to the dictum of the

Supreme Court in Mangalore Ganesh Beedi Works and Others Vs. Union of India (UOI) and Others, as to the criteria to be applied to find out

the existence of an employee-employer relationship in an establishment. It is then stated that the Respondent has no doubt or difficulty whatever in

treating the weavers as employees of the Petitioner establishment and, as such, the Respondent feels no necessity to approach the Central

Government for a decision u/s 19-A of the Act. The Respondent has also quoted the decision in Bajranglal Padia v. State of Orissa (1975) L.I.C.

830 to support his stand. Lastly, it is stated that the holding of an enquiry u/s 7-A during the pendency of a petition u/s 19-A is not interdicted in

any manner and, further more, as laid down in Chockan Palani Vilas Snuff Factory v. Regional Provident Fund Commissioner (1973) I. L.L.J. 139

in an enquiry u/s 7-A, there can not only be determination of dues payable by the employer, but there can also be a determination of the basic

question of the applicability of the Act to the particular employer or particular industry. The Respondent has therefore prayed for the dismissal of

the writ petition and the enquiry proceedings being continued.

4. Mr. M.R. Narayanswami, learned Counsel for the Petitioner, submitted that since the weavers who produce hand-woven textiles for the

Petitioner are not employees within the meaning of the Act, the Petitioner cannot be called upon to provide Provident Fund coverage for them and

it is this crucial matter which is being agitated before the Central Government, that authority being the competent authority under the Act, to solve

the doubt raised by the Petitioner. He pointed out that the bona fides of the Petitioner in filing a petition u/s 19-A cannot be disputed, because the

Petitioner had voluntarily introduced the Provident Fund contribution scheme to its regular employees even though they are below the minimum

number prescribed, by the Act. Another plea advanced by the Petitioner''s counsel is that an enquiry u/s 7-A and an enquiry u/s 19-A are on different planes and, as such, the Respondent cannot raise a defense that the enquiry u/s 7-A will not conflict with an enquiry u/s 19-A.

5. Miss. Radha Srinivasan, learned Central Government Junior Standing Counsel, submitted for the Respondent that the Act in question is a

welfare measure intended to benefit the poor and helpless employees, that several employers are not only refusing to make Provident Fund

contributions justly and lawfully due to the employees, but are resorting to various practices to thwart their employees deriving benefit under the

Act and that filing of petitions u/s 19-A to the Central Government is also being freely resorted to for stalling the operation of the Act, and

therefore, the Courts should not exercise their discretionary powers in favour of such employers and order postponement of the enquiry u/s 7-A on

account of the pendency of proceedings u/s 19-A. Miss. Radha Srinivasan then urged that for the purpose of determining the quantum of Provident

Fund contributions payable by an employer, the basic question of the liability of the employer or the establishment, as the case may be, will also

have to be gone into in proceedings u/s 7-A and, as such, the Petitioner can agitate the question of its non-liability to pay contributions under the

Act before the Respondent himself. The learned Counsel stated that the enquiry u/s 7-A will constitute a preliminary enquiry for the further enquiry

to be held u/s 19-A and, therefore, in the absence of an enquiry u/s 7-A, a successful and effective enquiry u/s 19-A cannot be held. As authority

for her contentions, the Respondents counsel referred to certain decision mentioned in the following paragraphs.

6. This is not the first time that a controversy as the one on hand has been raised before Courts. Before referring to some of the pronouncements of

Courts, it will be useful to refer to the relevant provisions in the Act. Sub-section (3) of Section 1 of the Act refers to the Establishments which will

attract the application of the Act. Sub-clause (a) says that subject to the provisions contained in Section 16, the Act will apply to every

establishment which is a factory engaged in any industry specified in Schedule and in which twenty or more persons are employed. Sub-clause (b)

says that the Act will also apply to any other establishment employing twenty or more persons or class of such establishments which the Central

Government may, by notification in the Official Gazette, specify in this behalf. There is a proviso to Sub-clause (b) which grants power to the

Central Government to notify even establishments employing less than twenty persons, provided the Government gives not less than two month''s

notice of its intention to do so. Thus, it may be seen that it is not all establishments that will attract the operation of the Act. Under Sub-clause (a),

the establishment must be a factory engaged in any industry specified in Scheduled I and secondly, twenty or more persons must be employed

therein. Under Sub-clause (b), the establishment need not fall within one of the industries specified in Scheduled I, but it should be an establishment

employing twenty persons or more and, secondly, it must be notified by the Central Government in the Official Gazette to attract the operation of

the Act. In Section 2 of the Act, the words, employer and employee are inter alia defined. Then we come to Section 7-A which is a newly

introduced section. The heading given to the section is, Determination of moneys due from Employers. Section 7-A(1) is in the following terms:

The Central Provident Fund Commissioner, any Deputy Provident Fund Commissioner or any Regional Provident Fund Commissioner may, by

order, determine the amount due from any employer under any provision of this Act, the scheme or the Family Pension Scheme, as the case may

be and for this purpose, may conduct such enquiry as he may deem necessary.

Sub-section (2) deals with the powers available to the officers conducting the enquiry, for completing the enquiry successfully. Sub-section (3)

enjoins the officer conducting the enquiry not to pass an order against the employer determining the contribution amount payable by him, without

giving him an opportunity to represent his case. Sub-section (4) lays down that an order made u/s 7-A shall be final and shall not be questioned in

any Court of law. Seeing the terms of the section, it can be easily gathered that the enquiry contemplated is only for determination of the quantum

of amount payable by an employer under any provision of the Act, Scheme or Family Pension Scheme. In other words, the enquiry is to start on

the basis that the establishment in question falls within the purview of Sections 3(a) or 1(3)(b) as the case may be, and the only matter which

needed enquiry and determination is the quantum of contribution payable by the employer.

7. On the other hand, if we take Section 19-A, the scope of enquiry therein is entirely different. The section says that if any doubt arises as to (i)

whether an establishment which is a factory is engaged in any industry specified in Schedule I, (ii) whether any particular establishment is an

establishment under the Act by virtue of a notification u/s 1(3)(b), (ii) the number of persons employed is an establishment, (iv) the number of years

which have elapsed from the date of commencement of the establishment and (v) whether the total quantum or benefits due to an employee has

been reduced by the employer, the Central, Government may pass an order or give direction or make provision in such a manner as will remove

the doubt or difficulty and such order of the Central Government shall be final. Thus Section 19-A deals with the more fundamental question of the

liability of an establishment to take contributions under the Act, whereas Section 7-A is only confined to the determination of the quantum of

contribution payable by an employee. It may be in some cases an enquiry u/s 7-A will reveal that no contribution is payable by an employer but

that cannot be construed to mean that an enquiry u/s 7-A runs on parallel lines with an enquiry u/s 19-A. Any finding arrived at in an enquiry u/s 7-

A that an establishment will not be covered by the provisions of the Act, should not be mistaken for the nature and scope of the enquiry u/s 7-A,

because the finding is attributable to the wrong premises on which the enquiry was started. Therefore, it follows that the enquiry u/s 7-A and the

enquiry u/s 19-A operate in different fields and planes. As a matter of fact, an enquiry u/s 7-A cannot be given parity of scope with an enquiry u/s

19-A, for if, the contrary position is conceded, then conflicting decisions are likely to occur and, in such an event, having regard to the wording of

Section 19-A, the finding rendered in an enquiry under that section will prevail over the finding rendered in an enquiry u/s 7-A. Therefore, to read

into Section 7-A something more than what is contained and hold that the ambit of the enquiry will not be confined merely to determination of the

quantum of amount payable by an employer, but also determination of questions falling within the purview of an enquiry u/s 19-A, does not

commend itself to my acceptance, for, as I said earlier, an enlarged enquiry u/s 7-A is bound to prove an exercise in futility whenever a contrary

finding is given by the Central Government u/s 19-A.

8. Turning, now, to some of the decided cases, the Respondent''s Counsel invited my attention to Chokkan Palani Vilas Vs. The Regional

Provident Fund Commissioner, . That was a case where without holding an enquiry u/s 7-A, the Regional Provident Fund Commissioner called

upon the Petitioner to pay certain amounts on the basis of certain particulars given by him from which he subsequently retracted. It was in that

context, Palaniswani, J., held that through it is not explicity stated in Section 7-A that it is open to the authorities specified therein to determine the

liability of the employer still the pre-requisite for determining the amount of contribution is the liability of the employer and therefore, in deciding the

amount of contribution payable, it is necessary to decide the question of applicability of the Act also. Moreover that was a case where a petition

u/s 19-A had not been filed and, therefore, it was thought that the question of liability can also be gone into in the enquiry u/s 7-A. Such special

features do not exist in the present case and, therefore, that decision cannot be of assistance to the Respondent in this case. In a later unreported

case, Money''s Textiles represented by Partner S. Subramaniam v. Regional Commissioner, Employees, Provident Funds, Tamil Nadu &

Pondicherry, Madras-14 Writ Petition No. 803 of 1970 Madras High Court, judgment dated 23rd June, 1971. Palaniswami, J., has followed the

view consistently taken by his Court in similar cases, viz., Annamalai Mudaliar and Bros. Vs. Regional Provident Fund Commissioner, Madras and

Others, and T.R. Raghava Iyengar and Co. Vs. The Regional Provident Fund Commissioner, , and held that whenever a dispute is raised about

the liability of an employer to make contributions under the Act, the machinery provided under the Act has to be invoked and, therefore, the

employer should move the Central Government u/s 19-A for determination of the dispute and, once a petition u/s 19-A is filed, further action u/s

7-A should be deferred.

9. Miss. Radha Srinivasan relied on a judgment of the Supreme Court in Mangalore Ganesh Beedi Works and Others Vs. Union of India (UOI)

and Others, to argue that the weavers employed by the Appellants in the above said reference and, therefore, as held by the Supreme Court in that

case, I must hold in the present case that the workers are employees and as such, the Petitioner is bound to participate in the enquiry u/s 7-A. I am

not persuaded by this argument, because the competent authority under the Act to decide the dispute is the Central Government and, before the

Central Government has given its decision in the reference made to it, this Court will not be justified in rendering a finding on the disputed question,

especially when there is no evidence about the nature and character of the employment given to the weavers by the Petitioner. The learned Counsel

then referred to the other authorities mentioned in counter-affidavit, namely New Street Textiles v. Union of India (1976) L.L.J. 238 and Bajranglal

Padia v. State of Orissa (1975) L.I.C. 830. But, the ratio in those cases is also a matter to be considered by the Central Government with

reference to the facts of the Petitioner''s case. In the absence of factual material, the Petitioner''s contentions cannot be rejected merely on the basis

of legal dictum.

10. Miss. Radha Srinivasan, vehemently pleaded that too often employers resort to petitions u/s 19-A to thwart implementation of the Act and it

should, therefore, be held that an enquiry u/s 19-A cannot be a bar to other proceedings under the Act going on. If the Department has any

grievance in the matter, if is for the Legislature to set it right by amending the provisions of the Act. As things now stand, an enquiry, u/s 7-A

cannot be proceeded with when an employer disputes his liability to make contributions under the Act and has made a reference to the Central

Government u/s 19-A to render its decision on the dispute.

11. For the aforesaid reasons, the petition will stand allowed and the rule nisi will be made absolute. There will be no order as to costs.