(1969) 06 MAD CK 0005

In the Madras High Court

Case No : Writ Petition No. 33 of 1967

Ramanujam Press APPELLANT

Vs

The Regional Provident Fund Commissioner, Madras RESPONDENT

Date of Decision : 19-06-1969

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 1(3), 5, 7A, 7A(3)

Citation : AIR 1970 Mad 224 : (1970) 2 LLJ 106

Hon'ble Judges : Ismail, J

Bench : Single Bench

Advocate : V. Krishnan, for the Appellant; S. Ramasubramania, for Central Govt. and Standing Counsel, for the Respondent

Judgement

Ismail, J.—Ramanujam Press is owned by a partnership. The establishment of the press was found employing 22 persons during inspection

by the officers of the respondent on 31-7-1964. On the basis of this inspection report, the respondent herein sent a communication dated 29-11-

1965 to the petitioner herein stating that the provisions of the Employees'' Provident Funds Act 1952 and the Scheme framed thereunder applied

to the petitioners'' establishment from 1-8-1964 and asked the petitioner to comply with the requirements of the provisions of the Act as well as

the Scheme. The petitioner put forward the contention that the Act was not applicable to the petitioner''s establishment since in the petitioner''s

establishment there were no 20 employees who have put in at least one year''s service and have worked for not less than 240 days. Since the

contention of the petitioner was not accepted by the respondent, the petitioner made representations to the Central Government u/s 19-A of the

Act. The Central Government by its communication dated 21-4-1966 came to the conclusion that the Act applied to the petitioner''s establishment.

2. Thereafter by a communication dated 15-12-1966 the respondent addressed the Collector of Madras to collect a sum of Rs. 2224-75 by way

of contributions and a sum of Rs. 85-75 by way of administrative charges from the petitioner herein under the provisions of the Revenue Recovery

Act. It is at this stage the petitioner has come to this Court and filed the present writ petition under Article 226 of the Constitution of India praying

for the issue of a writ of certiorari to quash the communication of the respondent dated 29-11-1965 stating that the Act applied to the petitioner''s

establishment with effect from 1-8-1964 and the communication dated 15-12-1966 addressed to the Collector requesting him to recover the

arrears of contribution and administrative charges under Revenue Recovery Act and copy marked to the petitioner.

3. The contentions of the learned counsel for the petitioner in support of this writ petition are three-fold. The first contention is that the provisions of

the Act have no application to the petitioner''s establishment since 20 or more persons were not employed in that establishment who had put in at

least one year''s service or had worked for not less than 240 days in a year; (2) the Administrative charges for a period earlier to the date of

communication, namely, 29-11-1965 should not be collected; (3) the communication dated 15-12-1966 addressed to the Collector of Madras

was in contravention of Sub-section (3) of Section 7-A of the Act in that no opportunity was given to the petitioner before determining the

quantum of the amount payable by the petitioner.

4. I shall now deal with these three contentions seriatim. As far as the first contention is concerned, it is really concluded by a Bench decision of

this Court against the petitioner. In . East India Industries (Madras) Private Limited Vs. Regional Provident Fund Commissioner, , a Bench of this

Court came to the conclusion that if for a period of one day in a year 20 or more persons were employed in the establishment, that will be sufficient

to attract the provisions of the Act. The learned Judges declined to accept the contention that the use of the expression ""in which 20 or more

persons are employed"" occurring in Section 1(3)(a) of the Act denotes a continuity of employment of all the 20 persons and therefore the fact that

20 or more persons were employed only for a part of the period or some of the days in the year will not be sufficient to attract the applicability of

the Act. This Bench decision of this Court is binding on me and therefore on the strength of this decision 1 must reject the first contention of the

learned counsel for the petitioner.

5. However, Mr. Krishnan, the learned counsel sought to distinguish this decision by pointing out that in that decision the learned Judges did not

consider the scope of Clause 26 of the Employees'' Provident Funds Scheme, Clause 26 of the Scheme is as follows:--

l(a) Every employee employed in or in connection with the work of a factory or other establishment to which this Scheme applies, other than an

excluded employee shall be entitled and required to become a member of the Fund from the beginning of the month following that in which this

paragraph comes into force in such factory or other establishment, if on the date of such coming into force he has completed one year''s continuous

service or has actually worked for not less than 240 days during a period of twelve months or less in that factory or other establishment or in any

other factory or other establishment to which the Act applies under the same employer, or partly in one and partly in the other.

However the crucial statutory provision to consider is not Clause 26 of the Scheme but it is Section 1(3)(a) of the Act. That provision is: ""Subject

to the provisions contained in Section 16, it applies-- (a) to every establishment which is a factory engaged in any industry specified in Schedule I

and in which twenty or more persons are employed. This section has nothing whatever to do with the duration of employment of the 20 or more

persons and all that it refers to is a factual employment of 20 or more persons in a factory. The only aspect that has to be considered is whether

Clause 26 of the Scheme throws any light on Section 1(3)(a) of the Act so that Section 1(3)(a) of the Act may be considered or interpreted as

contended for by the learned counsel for the petitioner. In the first place, the language of Section 1(3)(a) of the Act is clear and unambiguous and is

not capable of the interpretation contended for by the learned counsel. In the second place there is no inconsistency between the interpretation

found favour with the Bench of this Court of Section 1(3)(a) and Clause 26 of the Scheme. Clause 26 of the Scheme does not deal with the applicability of the Act to a particular factory but deals with the eligibility and the requirement of an employee to become a member of the Fund.

The stage at which Clause 26 of the Scheme comes into operation or play is obviously subsequent to the stage at which the Act becomes

applicable to the factory. Consequently either from the language of Clause 26 of the Scheme or from the setting in which that clause occurs in the

Scheme, there is no scope for that clause controlling the obvious and clear meaning of Section 1(3)(a) of the Act. Therefore I do not have the

slightest hesitation in rejecting the contention of the learned counsel that Clause 26 of the Scheme in any way controls the meaning of Section 1(3)

(a) of the Act, as interpreted by the Bench decision of this Court already referred to. Therefore I reject the first contention of the learned counsel.

6. As far as the second contention is concerned, that also has been decided against the petitioner by a Bench decision of this Court in Regional

Provident Fund Commissioner, Madras Vs. K.R. Subbaier Tape Factory, Tiruchirapalli, . In view of this Bench decision which is binding on me

this contention also fails.

7. On the other hand the third contention of the learned counsel for the petitioner is well founded. Section 7-A(1) of the Act states that 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 or of the Scheme and for this purpose may conduct such inquiry as

he may deem necessary. Sub-section (3) of this section provides that no order determining the amount due from any employer shall be made under

Sub-section (1) unless the employer is given a reasonable opportunity of representing his case. It is admitted by the learned counsel for the

respondent that no opportunity to represent the case of the petitioner before determining the amount mentioned in the communication dated 15-12-

1966 was given to the petitioner. Consequently there has been a clear violation of Sub-section (3) of Section 7-A of the Act. Therefore the

communication dated 15-12-1966 of the respondent addressed to the Collector of Madras requesting him to collect the arrears of contribution

and administrative charges under the provisions of the Revenue Recovery Act cannot stand

8. Under these circumstances, this writ petition is allowed to this extent, that the communication of the respondent dated 15-12-1966 addressed to

the Collector of Madras requesting him to collect arrears of contribution of Rs. 2224-75 and administrative charges of Rs. 85-75 from the

petitioner under the provisions of the Revenue Recovery Act is quashed. In other respects this writ petition will stand dismissed. There will be no

order as to costs.

