

(1989) 03 MAD CK 0086

In the Madras High Court

Case No : W.A. No's. 529 - 533 of 1980

Regional Commissioner, E.P.F.

APPELLANT

Vs

Kamaraj Textiles and Others

RESPONDENT

Date of Decision : 06-03-1989

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 19A, 7A

Citation : (1991) 62 FLR 540 : (1991) 1 LLJ 521

Hon'ble Judges : S. Mohan, O.C.J.; S. Ramalingam, J; K. Venkataswami, J

Bench : Full Bench

Advocate : T. Somasundaram, Addl. Central Govt, for the Appellant; S. Venkataraman, for the Respondent

Judgement

S. Mohan, C.J.—The reference arises out of an order made by S. Natarajan & Nainar Sundaram, JJ. to the following effect:--

"Can the provisions of the Act (The Employees' Provident Funds and Miscellaneous Provisions Act, 1952) be enforced when the question of applicability of the provisions of the Act is pending adjudication before the Central Government u/s 19-A of the Act?"

In other words, where an employer approaches the Central Government u/s 19-A of the Act for an adjudication of any one of the matters contemplated under the section, during the pendency of those proceedings, whether the enquiry stipulated u/s 7-A could be undertaken and the liability enforced. For long this court has taken the view that where a moot question arises about the applicability of the Act by reason of the application filed before the Central Government u/s 19-A, during the pendency of the application, no proceeding can take place u/s 7-A of the Act. Unfortunately in M/s. Premier Studs & Chaplets Co., rep. by partner R.K. Ramadoss and others, In re. 1980 L.W. C. 226 a contrary view was taken by a Division Bench of this Court. It was this decision which has necessitated the above reference.

2. On a consideration of the various rulings referred to by the learned Judges in the order under reference, we hold that there is neither a warrant nor any necessity to disturb the existing law as far as this court is concerned. Accordingly, we are of the view that during the pendency of the adjudication by the Central Government of an application filed u/s 19-A of the Act, there is no possibility of enforcement of the liability arising u/s 7-A of the Act. Our reasons are as follows:--

(1) Section 19-A itself, as the marginal note indicates, provides for "power to remove difficulties." Where therefore any doubt arises as to whether an establishment is a factory engaged in any industry specified in Schedule I; (ii) whether any particular establishment is an establishment falling within the class of establishments to which the Act applies by virtue of a notification under clause (b) of subsection (3) of Section 1; (iii) the number of persons employed in an establishment; or (iv) the number of years which have elapsed from the date on which an establishment has been set up; or (v) whether the total quantum of benefits to which an employee is entitled has been reduced by the employer, it is only the Central Government which has to give such direction for the removal of the doubt or difficulty, and the order of the Central Government in such cases, becomes final. All the above questions are fundamental in nature and unless and until they are determined, it passes our comprehension as to how the liability u/s 7-A of the Act could be enforced. Therefore, with respect, we hold that the decision in *M/s. Premier Studs & Chaplets Co., In re.* (supra) does not lay down the correct law.

3. Accordingly, we answer the point of reference as follows:--

During the pendency of the adjudication proceedings before the Central Government u/s 19-A of the Act, the liability u/s 7-A of the Act cannot be enforced and it will remain suspended till such adjudication is over.