

**(1986) 02 KAR CK 0021**  
**In the Karnataka High Court**  
**Case No : Writ Appeal No. 1105/82**

Regional Provident Fund Commissioner

APPELLANT

Vs

Ratna Enterprises

RESPONDENT

**Date of Decision :** 14-02-1986

**Acts Referred:**

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

**Citation :** (1986) 52 FLR 592 : (1986) ILR (Kar) 1265 : (1986) 2 LLJ 137

**Hon'ble Judges :** P. Ramakrishnan, J;M. Rama Jois, J

**Bench :** Division Bench

## Judgement

Rama Jois, J.—This writ appeal by the Regional Provident Fund Commissioner is against the order dated 18th February, 1982, passed by the learned single Judge allowing the writ petition of the respondent and setting aside the orders made by the appellant under S. 7A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter called "the Act").

2. The brief facts of the case are these :

There are two cinema theatres in Mangalore called "Rupavani and New Chitra Talkies". They were brought within the purview of the Act and the Scheme framed thereunder with effect from 1st August, 1963. In or about the year 1969, the propriety of the said establishments, viz., Smt. Ratna Bai, constituted a partnership with her children and continued to manage both the theatres. In the year 1973, the said partnership was dissolved and the assets and liabilities were divided equally among the partners. Consequently, there were two partnership firms called M/s. Ratna Enterprises, the respondent in this appeal, and M/s. Vittaldas Pai and Sons. The New Chitra Talkies went to the ownership of the former and the Rupavani Talkies to the latter. Again, the question of applicability of the provisions of the Act in respect of the New Chitra Talkies was raised before the appellant-Commissioner. The contention of the respondent was that, after the dissolution of the partnership firm and separation of ownership of the two theatres, the respondent did not have in its employment twenty or more persons

and, therefore, the provisions of the Act and the Scheme thereunder were not applicable. The Commissioner in his order noted that the provisions of the Act had been brought into force in respect of the employees of both the theatres right from 1st August, 1963, and therefore, even if the management of the two theatres was separated and there were less than 20 employees in each of the cinema houses, the provisions of the Act would not cease to apply in view of S. 1(5) of the Act. Aggrieved by the said order, the respondent presented the writ petition.

3. The learned single Judge was of the view that, apart from the question of dissolution of partnership, there were several other contentions raised by the respondent and, therefore, as those contentions had not been considered by the Commissioner, the order was set aside. Accordingly, the orders were set aside and the matter was remitted to the appellant. It is against the said order of the learned single Judge, this writ appeal has been presented.

4. Sri Padmarajaiah, learned counsel for the appellant, contended that as the fact that the provisions of the Act and the Scheme had been introduced in respect of the employees of the two theatres from 1st August, 1963, was not in dispute, no other question would make any difference for the reason that once the provisions of the Act and the Scheme were introduced in respect of the employees of an establishment, even if the number of employees falls below 20, the Act and the Scheme continue to apply to the employees irrespective of the number in view of S. 1(5).

5. That provisions read :

"An establishment to which this Act applies shall continue to be governed by this Act notwithstanding that the number of persons employed therein at any time falls below twenty."

6. The learned counsel for the appellant is right that once the provisions of the Act had been introduced in respect of the employees of the theatre under the ownership of the respondent, the subsequent reduction of the number of employees below twenty, whatever may be the reason, does not make any difference.

7. Sri Mallya, learned counsel for the respondent, however, contended that the original application of the provisions of the Act and the Scheme itself was unlawful as the two theatres were independent establishments; but, nevertheless, the number of employees of both the theatres was taken into account for the purpose of applying the provisions of the Act and the Scheme and as the application of the Act earlier itself was unlawful, the respondent was entitled to take the stand at any time, that the provisions of the Act and the Scheme were not applicable to the employees of the theatre under the ownership of the respondent. In support of his contention, learned counsel relied on a Division Bench decision of this Court in Mahipalsingh Shankarsingh v. Regional Provident Fund Commissioner [1972] 41 F.J.R. 329, 333. In the said case, the

Division Bench of this Court held as follows :-

"An employer having two or more establishments under his control and employing less than 20 persons in each of them would attract no liability to contribute the Provident Fund under the Act, unless it was possible to hold that several concerns form one establishment."

8. As can be seen from the facts of the said case, the petitioner therein had three concerns, viz., (1) commission agency business in cigarettes, petrol and kerosene oil; (2) commission agency business in foodgrains, and (3) oil-mill called Shri Shankar Oil-mill, all at different places. On the facts of the said case, the view taken was that all the concerns formed different establishments and, therefore, it was not correct to add up the number of employees to find out as to the applicability of the provisions of the Act and the Scheme. But, in the present case, both the theatres were owned by the same person and the authorities regarded them as one establishment as a question of fact and, accordingly, the provisions of the Act and the Scheme were made applicable as early as on 1st August, 1963. It is also seen that as early as in the year 1967, this question was raised before the then Regional Provident Fund Commissioner and in the order dated 5th September, 1967, produced as Annexure-A along with the writ petition, the then Provident Fund Commissioner held that both the theatres must be treated as one establishment and continued the coverage as both the establishments fell within one scheduled establishment. The said order has become final and had remained unchallenged. In our view, at this distance of time, the respondent cannot be permitted to take the stand that the two theatres shall not be treated as one unit for the purpose of coverage under the provisions of the Act and the Scheme made thereunder. Once that position is established, then, even if the two theatres subsequently went under different owners and consequently the number of employees in each of the theatres happens to be less than 20, no exception to the applicability of the Act can be taken in view of S. 1(5) of the Act.

9. For the aforesaid reasons, we are of the view that the order of the appellant-Commissioner holding that the respondent was governed by the provisions of the Act and the Scheme framed thereunder was correct and there was no ground for interference in the writ petition under article 226 of the Constitution.

10. In the result, we make the following order :

(i) The writ appeal is allowed;

(ii) in reversal of the order of the learned single Judge in W.P. No. 12035 of 1981, the writ petition is dismissed; and

(iii) no costs.