

(1973) 02 MAD CK 0019
In the Madras High Court

Sampathkumaran and Co.

APPELLANT

Vs

The Regional Commissioner for Provident Fund

RESPONDENT

Date of Decision : 19-02-1973

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 1(4), 7A

Citation : (1974) 1 MLJ 153

Hon'ble Judges : T. Ramaprasada Rao, J

Bench : Single Bench

Judgement

T. Ramaprasada Rao, J.—The petitioner is a firm of chartered accountants. One P.T. Sampath Kumaran was running the firm of M/s.

Sampathkumaran & Co., as its sole proprietor. He had on the rolls of his firm four employees consisting of one assistant, one manager, one

stenographer and one peon. u/s 1 (4) of the Employees' Provident Funds Act, 1952, the petitioner-company along with its employees applied to

the appropriate statutory authority under the Act for including the petitioner-company as a covered establishment thereunder, for the purpose of

institution of a provident fund for its employees. Later, the constitution of the firm was changed on 1st April, 1969, when the quondam proprietary

firm became a partnership one. On 11th April, 1969, the present petitioner-company after the reconstitution applied for withdrawal of the firm and

its employees from the liability to contribute to the provident fund as required under the Act and sought for final orders thereon. The respondent

would not permit the establishment to go out of the purview of the Act and he put it on the ground that the partnership was formed subsequent to

the notification made by the Government of India on the original request of the petitioner to come within the scheme of the Fund and that therefore

they cannot go out of it. By an order dated 13th October, 1970, while rejecting the request of the petitioner to cease its liability to contribute to the provident fund as required under the Act, the respondent proposed to hold an enquiry in terms of Section 7-A of the Act. After such an enquiry, the challenged order was passed on and March, 1971. The respondent submits that the notification covering the establishment u/s 1 (4) of the Act was issued on 24th September, 1968 and that on that date, it was a partnership concern. Factually, this finding is not correct. He proceeded further and after examining other details, fixed the contribution payable by the petitioner-company. It is as against these two orders, the present writ petition has been filed.

2. The petitioner's case is that the respondent cannot refuse an establishment which joined the provident fund in the circumstances stated above to release it from the statutory liability if the very same establishment and its employees make a subsequent request for that purpose. The Act itself is meant to provide for the institution of provident fund for employees in factories and other establishments. This is one of those beneficial pieces of legislation intended to protect the interests of employees more, rather than those of the employer. The jurisdiction which the statutory authority gets automatically under the Act is in relation to an establishment which is a factory engaged in any industry specified in Schedule I to the Act and in which twenty or more persons are employed and also to any other establishment employing twenty or more persons, etc. Admittedly, the petitioner-company at no time had twenty or more persons on its rolls, and as such the respondent has no jurisdiction to call upon the petitioner-company to contribute under the normal provisions of the Act. But in the instant case, the establishment itself approached the authority to include it, on the list of contributories, and in that behalf, a request was made by the employer as well as the employees resulting in the application of the provisions of the Act to the petitioner-company which normally would be outside the purview and jurisdiction of the Act. The question is if such an establishment comes within the purview of the Act by a voluntary process of its own, can it or can it not go out of it once again on its own request. It is elementary that if a person or a body of persons can do an act for their benefit but contemporaneously burdened with obligations they would,

be in order at any time thereafter to seek for a relief of such obligations created by their voluntary act of commission by once again expressing in

unequivocal terms their desire not to be burdened any more with such liabilities or obligations. This is reflected in Clause 21 of General Clauses

Act. It therefore follows that notwithstanding the reconstitution of the firm from a proprietary one to a partnership one, the majority of the

employees together with the employer can seek for a withdrawal of their original application which bound them under the provisions of the

Employees' Provident Funds Act, 1952. This is what the petitioner did when it applied on 4th April, 1969 for such a relief. The petitioner is

entitled to the relief and the respondent is bound to release the petitioner.

3. The question, however, is whether the application for withdrawal has been made by the employer and the majority of the employees in relation

to the establishment of the petitioner-company. The reconstituted firm has retained three out of the four employees besides the quondam proprietor

of the firm. One of the employees, however, has become a partner; but he is still a serving member of the establishment. At the time when an

application was made by the employees for joining the fund, the four employees and the proprietor were the joint applicants. At the time when they

sought for a release from the obligation under the Act, the person one Sudandiram, has not obviously signed, since it is reported that by then he had

resigned. But u/s 1 (4) of the Act, the application for joining should be made by the employer and a majority of the employees. Even so, it follows

that a desire that the provisions of the Act need not be made applicable to the establishment may also be communicated by the employer and a

majority of the employees therein. Here, the employer and the other employees of the company have made such a request on 4th April, 1969. I am

of the view that the petitioner is entitled to the relief asked for, namely, for the issue of a writ in the nature of certiorari, since the order passed by

the respondent is without jurisdiction and poses also an apparent error of law. The respondent is bound not only to entertain the application for

withdrawal, but also accept the request for the non-application of the provisions of the Act to the petitioner-company, as the respondent has no

jurisdiction otherwise as against the establishment under the provisions of the Act.

4. In the result, the Writ Petition is allowed and there will be no order as to costs.