(1990) 03 AHC CK 0023

In the Allahabad High Court

Case No : C.M.W.P. No. 18568 of 1987

Shakti Theatre APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

Date of Decision : 01-03-1990

Acts Referred:

Cine-Workers and Cinema Theatre Workers (Regulation of Employment) Act, 1981 — Section 24
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 1(3)

Citation : (1990) 60 FLR 827 : (1999) 3 LLJ 81 : (1990) 1 UPLBEC 707

Hon'ble Judges : K.C. Agrawal, Acting C.J.;R.A. Sharma, J

Bench : Division Bench

Advocate : Sunil Ambhawani, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

K. C. Agrawal, A.C.J.

1. This petition under Art. 226 of the Constitution has been filed by Shakti Theatre, Civil Lines, Bijnor, for a writ of certiorari quashing the notification dated April 30, 1986 issued by the Central Government u/s 5 read with Sub-section (1) of Section 7 of the Employees'' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the Provident Funds Act)(Act 19 of 1952).

2. Shakti Prasad Mittal is the proprietor of the cinema at Bijnor which he is running in the name of Shakti Theatre. In 1952, the Parliament enacted the aforesaid Act the institution of the benefit of Provident Funds for the employees in factories and other establishments. Sub-section (3) of Section 1 makes the provisions of the Provident Funds Act applicable to every establishment which is a factory engaged in any industry specified in Schedule I and in which twenty or more persons are employed. Clause (b) of Sub-section (3) of Section 1 confers power on the Central Government to issue a notification applying the provisions of the Provident Funds Act to an establishment other than those mentioned in

Schedule I.

3. Section 24 of the Cine-Workers and Cinema Theatre Workers (Regulation of Employment) Act, 1981, provides for the regulation of conditions of employment of certain cine workers and cinema theatre workers and for matter connected therewith. This Section, which is relevant for our purpose, applies the provisions of the Provident Funds Act to every cinema theatre in which five or more workers are employed on any day, as if such cinema theatre were an establishment to which the aforesaid Act had been applied by a notification of the Central Government under the proviso to Sub-section (3) of Section 1 thereof, and as if each such worker were an employee within the meaning of that Act.

4. Section 5 of the Provident Funds Act confers power on the Central Government, by notification, to frame a Scheme to be called the Employees'' Provident Fund Scheme for the establishment of Provident Funds under the Provident Funds Act for employees or for any class of employees and specify the establishments or class of establishments to which the said Scheme shall apply. Sub-section (2) of Section 5 lays down that a Scheme framed under Sub-section (1) of Section 5 may provide that any of its provisions shall take effect either prospectively or retrospectively on such date as may be specified in this behalf in the Scheme. Section 6 deals with contributions and matters which may be provided for in Scheme. Section 7 confers power of modification of Scheme on the Central Government which can be done by means of a notification in the official gazette. Section 7A provides the machinery for determination of disputes about the amount which may be due from the employers. The power to decide such dispute has been conferred by Sub-section (1) of Section 7A on the Central Provident Fund Commissioner or any Additional Central Provident Fund Commissioner etc. Section 7A provides for; appeals to Tribunal against the decision of the Central Provident Fund Commissioner made u/s 7A.

5. In pursuance of the power conferred by the amended Section 24 of the Cine Workers and Cinema Theatre Workers (Regulation of Employment) Act, every establishment which had five workers in its employment had been brought within the purview of the Employees'' Provident Funds Act when the notification to that effect was issued by the Central Government under Sub-section (3) of Section 1 of the said Act. Such a notification was issued in the present case by the Central Government on April 30, 1986. The notification is quoted below:

"G. S. R. in exercise of the powers conferred by Section 5 read with Sub-section (i) of Section 7 of the Employees'' Provident Funds and Miscellaneous Provisions Act No. 19 of 1952, the Central Government hereby makes the following Scheme further to amend the Employees'' Provident Funds Scheme 1952, namely;

(1) This scheme may be called the Employees'' Provident Fund (Amendment) Scheme, 1986.

(2) In the Employees'' Provident Funds Scheme 1952 in Para 1, in sub-para 3, in Clause (b) after item (xcvii) the following item shall be added namely;

"(xcviii) as respect the cinema theatre employing five or more workers as specified in Section 24 of the Cinema Workers and Cinema Theatre Workers (Regulation of Employment) Act 1981 (50 of 1981) be deemed to have come into force with effect from October 1, 1984.

(No. S35016/l/86-SS II)

Sd/- A. K. Bhattari, Under Secretary April 30, 1986."

6. The Central Government also framed a Scheme for the benefit of the cinema theatre workers on August 14, 1986 which was enforced with effect from October 1, 1984. Paragraph 3 of this Scheme requires the employers of the owners of the cinemas to submit a list of the employees who were in their employment on October 1, 1984. Paragraph 17 of the Scheme deals with the contributions which have to be made to the provident funds under the Scheme applied to cinema workers, the relevant portion of which reads:

"Please note that Family Pension Fund Scheme does not envisage retrospective membership even in the cases of retrospective coverage of the establishment. You are, therefore, required to apply Family Pension Fund Scheme w.e.f. February 1, 1986 only".

7. The main argument raised in this case and connected writ petitions was that the notification dated April 30, 1986 was ultra vires of the provisions of the Provident Funds Act in as much as the Central Government could not extend the Scheme to an establishment which was neither an industry nor a notified establishment u/s 1(3)(b) of the Provident Funds Act. The submission of the petitioner''s counsel has no substance in as much as Section 24 of the Cine-Workers and Cinema Theatre Workers (Regulation of Employment) Act, 1981 has applied the provisions of the Provident Funds Act to every cinema theatre in which five or more workers were employed on any day, as if such cinema theatre were an establishment to which the provisions of the Provident Funds Act had been applied by a notification of the Central Government under the proviso to Clause (b) of Sub-section (3) of Section 1 of the Provident Funds Act. Consequently, although the employees in the cinema theatre were less than twenty, even then the Provident Funds Act would apply. Section 1(3)(b) of the Provident Funds Act empowers the Central Government to apply the said Act to all trading or commercial establishments, whether such establishments are factories or not (See Varjivandas Hirji and Co. Vs. Regional Provident Fund Commissioner (D.T. Ghatpude) and Another, . No notification is required for making the provisions of the Provident Funds Act applicable to a factory which is an industry.

8. The Provident Funds Act has been found to be valid by a number of decisions. Amongst them, reference may be made to a decision of the Supreme Court in Mohmedalli and Others Vs. Union of India (UOI) and Another, . In this case the validity of Section 1(3)(b), 16 and 17 of the Provident Funds Act had been upheld.

9. Counsel next urged that there was no liability under the Scheme framed by the Central Government to make contribution towards the provident fund in respect of the employees who ceased to be a cinema employee before the Provident Funds Act came into force from April 30, 1986. From paragraph 9 of the counter affidavit filed on behalf of the respondent as well as on interpretation of the Scheme, it appears that only those employees who were in employment on April 30, 1986 and had not ceased working in a cinema in respect of whom the benefit was being claimed, would be entitled to get the benefit of the Scheme. In the notice, the demand of contribution was being made under the Scheme in respect of the employee working on June 30, 1986 with effect from October 1, 1984. Since the demand was being for the employer''s contribution in respect of the employees who were working on April 30, 1986, it is wrong to argue that the Scheme was being incorrectly applied. Those workers who had left the cinema and had ceased to be its workers on April 30, 1986, would certainly not be entitled to any benefit under the Scheme.

10. The argument of the petitioner''s counsel that the demand by the Provident Fund Commissioner from the employers about the arrears of contribution even for pre-discovery period (i.e. the date from which the Scheme became applicable to employers, the date on which the employer was called upon to pay contribution by notice), leads to hardship or injustice, has no substance. A similar argument advanced in Regional Provident Fund Commr., Madras v. A. R. Subbaier Tape Factory, Tiruchirapali AIR 1967 MP 129 was repelled by the Madras High Court.

11. Counsel for the petitioner urged that it was wrong on the part of the Provident Fund Commissioner to claim administrative charges even for the period when there was no fund to administer, is not correct. This argument overlooks one important point, the same being that the administrative charges are not based upon per year. They are fixed at a percentage of the amount of contribution levied and are therefore, intended to meet the expenditure involved in investment, keeping of accounts and so on, which can all arise only subsequent to the actual collection. From this point of view, the claim for administrative charges to pay by way of contribution for the past period, is clearly permissible and legal.

12. For what we have said above, that writ petition fails and is dismissed. No Costs.

