

(2009) 01 RAJ CK 0069
In the Rajasthan High Court

Shri Jain Swetamber Nakoda Paraswnath Teerth	APPELLANT
Vs	
Regional Provident Fund Commissioner and Others	RESPONDENT

Date of Decision : 05-01-2009

Acts Referred:

Industrial Disputes Act, 1947 — Section 2

Citation : (2009) 120 FLR 1195 : (2009) 3 LLJ 715 : (2009) 2 RLW 1778 :
(2009) 3 SLJ 114

Hon'ble Judges : Vineet Kothari, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Vineet Kothari, J.—By this petition, the petitioner has challenged its coverage under the provisions of Employees. Provident Fund and Misc. Provisions Act, 1952.

2. The respondent - authority under the said Act after holding inspection issued notice Annex.4 dtd. 21.3.1994 to the petitioner - Trust about coverage of said Trust under the provisions of the Act. The petitioner - Trust supplied the requisite information in the prescribed form, Annex.6 on record to the effect that the petitioner is a temple - Trust of 600-800 years old and it is neither a business nor an industrial establishment, but it is a temple and is a Trust registered under the Rajasthan Public Trust Act, with the Devasthan Department. It was also stated in the said Annex.6 that looking to the historical importance of the said temple - Trust, the Central Board of Direct Taxes has exempted the said Trust from Income Tax. It has neither any profit motive nor is engaged in any business activities or industrial activities and therefore, it is not covered by the provisions of the said Act of 1952.

3. Against the impugned order Annex.7 dtd. 31.5.1994 allotting code No. 7154 to the petitioner - Trust, the petitioner Trust approached this Court by way of present writ petition contesting its coverage under the provisions of the said Act.

4. Mr. L.R. Mehta, learned Counsel for the petitioner urged that the notice given to the petitioner - trust was on the basis of coverage entry No. 16(2) of Appendix (i) of the said Act of 1952, which enumerates list of certain establishments to which the Employees Provident Fund Act, 1952 has been made applicable u/s 1 (3)(b) of the said Act. The said entry 16(2) reads as under:

16(1) ...

(2) Societies, clubs or associations, which provide board or lodging or both or facility for amusement or any other service to any of their members or to any of their guests on payment.

5. The learned Counsel for the petitioner submitted that the petitioner - Trust cannot fall within the definition or understanding of the term "Societies, clubs or Associations" as was sought to be applied to the petitioner - Trust for its coverage under the Act because it does not provide facilities specified in the said entry No. 16(2) of the said Act.

6. The learned Counsel for the petitioner also relied upon the judgment of this Court in the case of Sri Gopal Gaushala, Jhunjhunu v. The Regional Provident Fund Commissioner, Jaipur reported in RLW 1997(3) raj 1753 in which the coordinate Bench of this Court held that since the dominant activity of Guashala was to provide protection and treatment of aged, invalid and diseased cows, selling milk was an incidental activity, therefore, the said Gaushala was not covered by the provisions of the said Act. Another judgment relied upon by the learned Counsel for the petitioner was in the case of Ramakrishna Mission and Another Vs. State of West Bengal and Others, in which Calcutta High Court held that Ramakrishna Mission, a registered society, whose objects are religious, social and educational had neither any business nor any commercial motive and therefore, the dairy farm run for the use of the Institution did not bring the said Society within the ambit or scope of Trade Unions Act, 1926. In the case of Mahamadkha Gajika Baloch Vs. Manager, Panchasara Jain Derasar, , the Hon''ble Apex Court upholding the decision of Gujarat High Court in the case of Manager, Panchasara Jain Derasar, Patna Dist. Vs. Mahmadkha Gajikha Baloch, to the effect that Jain Temple is not an industry as defined in Section 2(j) of the Industrial Disputes Act, awarded adhoc compensation to the retrenched workman of Rs. 35,000/-. Nothing contrary to the decision of Gujarat High Court was held by the Apex Court, In the case of T.B. Association of India v. Regional Provident Fund Commissioner, New Delhi and Anr. reported in 1981(1) LLN 437, the Division Bench of Delhi High Court construing Section 1(3)(b) of the Act read with Entry relating to "societies, clubs and associations" held that T.B. Association is essentially a research centre and the primary activity of its Institution is research. It is a research training centre with about fifty indoor beds which are not meant for routine treatment, but only for patients included in any clinical drug trial and so required to be present in the clinic throughout for close observation for diagnostic or treatment problem. Therefore, the Court held that the said T.B. Association was not covered by the provisions of Section 1 (3)

(b) of the Act of 1952.

Thus, the learned Counsel for the petitioner contended that the petitioner - Trust does not carry out any commercial, trading, manufacturing or industrial activities, but manages an old Jain temple which cannot be covered by the definition of "establishment" u/s 1(3)(b) of the Act and as per entry No. 16(2) quoted above and therefore, coverage order passed by the Regional Provident Fund Commissioner allotting it a code number and asking it to pay provident fund contribution in respect of its employees deserves to be quashed.

7. On the side opposite, Mr. Lokesh Mathur appearing for Mr. V.K. Mathur and Mr. A.K. Rajvanshy appearing for the Workmen's Association urged that the definition of word "establishment" in Section 1 (3)(b) of the Act is wide enough to cover the present petitioner trust also. Its charitable nature does not exclude it from the applicability of the said Act. They submitted that since the petitioner - Trust does not fall within the ambit and scope of Section 16 of the Act providing for specific exemption from applicability of the Act to certain, institutions like Cooperative Societies etc., therefore, the petitioner - Trust should be held bound by the provisions of the said Act and should pay provident fund contributions. The learned Counsel for the respondents relied upon the decision of Madras High Court in the case of *The Venkataramana Dispensary and Ayurvedic College Vs. Union of India* and *The Regional Provident Fund Commissioner, Madras*, in which Madras High Court held that the question as to whether the petitioner is a charitable institution or a commercial institution is outside the purview of the discussion while deciding the applicability of the Act and it is clear from the facts as admitted by the petitioner himself in the affidavit filed in support of the writ petition that there is a dispensary mainly run to impart practical training analogous to house surgery in the regular allopathic medicines and that in the course of practical training, medicines are prepared under the advice and guidance of doctors teaching in the college and that such medicines are given to patients who come to the dispensary for treatment. Therefore, such dispensary would fall within the definition of "establishment" attracting the provisions of Section 1 (3)(b) of the Act. The learned Counsel for the respondents also relied upon the decision of Madras High Court in the case of *R.L. Sahni and Co. Vs. Union of India* and *Another*, in which Madras High Court dealing with the controversy relating to change of hands of management of a business establishment held that a mere change of hands would not clothe the establishment with newness and where the Company took a lease a Cinema Theatre and its equipment which was already in existence for many years and started cinema shows under a different name and style, the Company was not entitled to infancy protection on the ground that its business was newly started from the date of the lease only. The learned Counsel for the respondents also urged that the term "establishment" should be widely construed in the context of beneficial legislation like the Employees Provident Fund Act, 1952 and therefore, the writ petition deserves to fail.

8. I have heard the learned Counsels at length and perused the judgments cited at the Bar and the provisions of the Act of 1952.

9. The coverage of any institution or establishment under the provisions of Act of 1952 would naturally depend upon the definition and relevant entry in the Schedule or Appendix as the case may be. Section 1 of the Act provides for short title, extent and application, it provides in Sub-section (3) that subject to the provisions contained in Section 16, it applies 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 was not in dispute that the petitioner does not fall under Clause (a) of Sub-section 3 of Section 1 of the Act. Clause (b) of Sub-section (3) of Section 1 of the Act provides that the Act shall apply to any other establishment employing twenty or more persons or class of such establishments which the Central Government may, by notification in the Official Gazette, specify in this behalf. Thus, any establishment employing 20 or more persons are covered under Clause (b) of the Act. Entry No. 16 (2) relating to the "Societies, Clubs or Associations" already quoted above does not make any mention of any public trust being covered under the said Entry. The words "Societies, Clubs or Associations" mean the Societies, Clubs or associations which provide board or lodging or both or facility for amusement or any other service to any of their members or to any of their guests on payment basis. There is nothing on record to indicate much less establish that the petitioner - Trust is engaged in any such activity which can be covered by said Entry No. 16(2) quoted above. The other words "establishment employing 20 or more persons" also has to be read in the context of definition given in Section 1(3) of the Act, namely, the establishment engaged in any business or manufacturing activities or industrial activities. The charitable or religious trust which manages a Temple like the present one are neither directly covered by any of the definitions of the said Act nor can it be so impliedly covered by the said definition. The very purpose of the said Act was to provide protection to industrial workers by providing them the social security in the form of Provident Fund under the Scheme formulated under the provisions of the said Act of 1952. The coverage of the said Act cannot be extended or stretched beyond the four corners of the definition given in the said Act itself. There is no question of claiming any exemption u/s 16 of the Act. If the Public Trust managing a Temple cannot fall within the ambit and scope of the Act itself as per its definition clause, there is no need for it to claim any exemption as: per Section 16 of the Act. It is simply outside the purview and scope of applicability of the Act itself.

10. The contention of the learned Counsel for the respondents that the interpretation of the word "establishment" should be liberal does not permit this Court to stretch the definition of establishment, industry, society, club or association engaged in the specific activities so as to cover the present Trust managing the affairs of the temple. The judgments cited by the learned Counsel for the respondents particularly that of Madras High Court dealt with the case of altogether different nature, where a dispensary and Ayurvedic College

manufacturing certain Ayurvedic medicines during the course of research work was engaged in the activity of dispensing those medicines to the patients and therefore, the Court was inclined to extend the coverage of the said Act u/s 1(3) (b) of the Act. The ratio of said decision as also other decision of Madras High Court cited by the learned Counsel for the respondents dealing with the change of management in a case of business establishment is of little avail to the respondents. On the other hand, the judgments relied upon by the learned Counsel for the petitioner; one in the case of Ramakrishna Mission (supra) and another in the case of Mahamadhka Gajika Baloch v. Manager, Panchasara Jain Derasar (supra) which stood on the same footing as the present Trust as also the case of Gopal Gaushala (supra) clearly support the contention of the learned Counsel for the petitioner.

11. Therefore, this Court is of the clear opinion that the petitioner - Trust is neither a society, club or association falling under Entry No. 16(2) of Appendix (I) to the said Act nor it is an establishment employing more than 20 persons otherwise covered u/s 1 (3)(b) of the said Act.

12. Accordingly this writ petition is allowed and the impugned order of the Regional Provident Fund Commissioner dtd. 31.5.1994 (Annex.7) and consequential order dtd.6.7.1994 (Annex.9) are quashed and set aside and it is held that the petitioner - trust is not covered by the provisions of Employees Provident Fund and Misc. Provisions Act, 1952. Costs made easy.