**(1964) 12 MAD CK 0020**

**In the Madras High Court**

**Case No :** Writ Petition No. 129 of 1963

Sri Varadarajaswami Transports (Pvt.) Ltd. APPELLANT

Vs

Regional Provident Fund Commissioner, Madras and Another RESPONDENT

**Date of Decision :** 18-12-1964

**Acts Referred:**

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 1(3), 16

**Citation :** AIR 1965 Mad 466 : (1966) 1 LLJ 699 : (1965) 78 LW 203

**Hon'ble Judges :** Srinivasan, J

**Bench :** Single Bench

## Judgement

(1) The petitioner company was incorporated on 10th May 1960. It appears to consist on only two members, the Managing Director and his wife,

who are the sole proprietors of the concern. Prior to the formation of the company, the Managing Director was the individual owner of the bus

concern. The Regional Provident Fund Commissioner issued a notice dated 17-9-1962, demanding certain payments under the Employees''

Provident Funds Act. The petitioner company contended that it came into existence only on 10th May 1960 and was entitled under S. 16 of the

Employees'' Provident Funds Act to exemption form the provisions of the law for a period of five years. This contention of the petitioner company

was not accepted. Since penal action for failure to comply with the requirements of the notice was threatened, the petitioner has approached this

court for the issue of a writ of mandamus to forbear the respondent, the Regional Provident Fund Commissioner, from enforcing the Act and the

scheme against the petitioner.

(2) In the counter affidavit filed on behalf of the department, it is stated that road transport concerns were brought within the ambit of the Act by a

notification effective from 1-8-1961. It is contended by the department that the establishment in question had been in existence from 1932

onwards and that is incorporation as a company cannot entitle it to say that it is a new establishment to which the benefits of S. 16 are available.

The establishment having been in existence for more than five years already the respondent acted within his jurisdiction in demanding that the

petitioner company should comply with the requirements of the scheme. It is accordingly claimed that the petition is devoid of substance and should

be dismissed. The question lies within a very narrow compass. It is whether in these circumstances the petitioner is entitled to the rotation of S. 16

of the Employees'' Provident Funds Act. Section 16 reads:

This Act shall not apply: (a) to any establishment registered under the Co-operative Societies Act 1912, or under any other law for the time being

in force in any State relating to Co-operative Societies, employing less than 50 persons and working without the aid of power: (b) to any other

establishment employing 50 or more o persons or 20 or more but less than 50 persons, until the expiry of three years in the case latter, from the

date on which the establishment is or has been set up"".

We are not concerned with sub-clause (a). Though Mr. Sundaravaradan, learned counsel for the petitioner, raised some question with regard to

the number of persons employed, it was not in dispute that the petitioner company did employ more than 20 butlers than 5 persons after the date

of the incorporation. The question then is whether the expression ""the date on which the establishment is or has been set up"" means the date on

which the company was incorporated.

(3) The word ""establishment"" has not been defined in the Act, though that word has been used in several provisions of the Act, as also in other

terms which have been defined in the definition section. An ''establishment'' therefore must be given its ordinary meaning and it means an

organisation which employs persons between whom and the establishment the relationship of employee and employer comes to exist. That broad

definition will suffice for the purpose of this case. Mr. Sundaravaradan contends that an incorporation brings a new entity into existence and that

therefore the old entity has altogether ceased to exist, and in support of this argument he has cited Salomon v. Salomon and Co., 1897 AC 22, a decision of the House of Lords. It is unnecessary to refer to any portions of the judgment, for there is no disputing the position that the company is

juristic entity different from the persons who are members thereof. But that has no bearing whatsoever upon the question whether the establishment

which existed previously and which was concerted into a company puts an end to the establishment and brings a new establishment into existence.

It is also argued by the learned counsel that is was only by a notification issued by the Government that these transport undertakings came within

the scope of the Act and it is that date which is relevant for the purpose of computing the period of protection which S. 16 provides for. I am

unable to agree with this view either. By S. 1(3) of the Act, it is open to the Central Government to bring within the cope of the Act any

establishment (other than a factory engaged in any industry specified in Schedule I) employing 20 or more persons. By virtue of a notification

issued, such establishments like those of the petitioner have been brought within the scope of the Act, but S. 16 has no relevant to he date on

which such notification has been issued. It computes the period of the protection of three or five years, as the case may be, not from the date on

which any establishment is brought within the scope of the Act by virtue of a notification, but form the date on which ""the establishment is or has

been set up"". The introduction of an incorporate personality in 1960 does not, therefore, have any effect upon the continued existence of the

establishment. It seems to me that since there is no doubt that the establishment was originally set up in 1932, the mere fact that the owner formed

a company in 1960 makes no difference to the date on which the establishment has been set up.

(4) A similar question was conceded by me in a batch of writ petitions Devi Press Vs. Regional Provident Fund Commissioner, Madras and

Another, and in somewhat analogous circumstances, and the contention that a new establishment had come into existence was rejected. In another

case also decided by me R.L. Sahni and Co. Vs. Union of India (UOI) and Another, the case arose where the owner run it himself but leased it

out form time to time, and one of such lessees, the petitioner, contended that he was entitled to the benefit of S. 16 from the date on which he took

over the lease. That contention was rejected by me in the view that the date on which the establishment had been set up could not be interpreted by reference to any leases that might have been granted form time to time.

(5) I am accordingly of the opinion that the claim to the protection of S. 16 of the Act is devoid of substance. The petition fails and is dismissed.

There will be no order as to costs.

(6) Petition dismissed.

 