

(1988) 06 KL CK 0025
In the High Court Of Kerala

Travancore Rayons Ltd. and Others

APPELLANT

Vs

Provident Funds Officer, Emp. Provident Funds and Others

RESPONDENT

Date of Decision : 10-06-1988

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 468, 472, 482

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14, 14A, 2

Citation : (1989) 1 LLJ 414

Hon'ble Judges : K. Sreedharan, J

Bench : Single Bench

Judgement

K. Sreedharan, J.—The same question arises for consideration in these petitions. Therefore, I am disposing of all of them by the common order.

2. The Provident Fund Officer, Employees' Provident Funds, lodged prosecutions against the petitioners under Sections 14(2-A) and 14A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as "the Act"). The petitioners have approached this Court challenging those prosecutions. The prayers made by them before this Court are:

(a) to call for the records leading to Case No. ST. 421 of 1988 pending before the Judicial 1st Class Magistrate, Perumbavoor;

(b) to stay the further proceedings in Case No. S.T. 421 of 1988 pending before the Judicial 1st Class Magistrate, Perumbavoor, till the disposal of the above Crl. M.C., and

(c) to pass such other reliefs as may be prayed for and this Hon'ble Court may deem fit and proper in the circumstances of the case.

3. From the above prayers, it is clear that the petitioners have not asked for quashing the complaint pending before this Court. But the argument proceeded on the basis that their prayer is to have the complaints quashed. So I am dealing with the question as to whether the complaints are liable to be quashed.

4. Learned counsel appearing for the petitioners raised the following points for consideration:

(i) In view of the notification issued by the Government of Kerala u/s 3(2) of the Kerala Relief Undertakings (Special Provisions) Act, 1961, the proceedings before the Court below are to be stayed for the period covered by those notifications.

(ii) The claims put forward by the Provident Fund Officer are barred by limitation and hence liable to be quashed.

(iii) The petitioners are not the persons responsible for the conduct of the business of the company and hence no prosecution will lie against them.

5. I shall proceed to deal with the above arguments.

Paragraph 38 (1) of the Employees' Provident Funds Scheme, 1952, imposes an obligation on the "employer" to pay the provident fund contribution to the Fund within 15 days of the close of every month. The word "employer" is not defined in the Scheme. But it has the same meaning assigned under the Act. Section 2(e) (ii) of the Act defines an employer, in relation to an establishment, as the person who or the authority which, has the ultimate control over the affairs of the establishment, and where the said affairs are entrusted to a manager, managing director or managing agent, such manager, managing director or managing agent. Thus the responsibility to pay the contributions to the provident fund is of the persons who have the ultimate control over the affairs of the establishment. If they have defaulted in paying the amount, they are liable to be prosecuted under the Act because it says that if any person fails to pay any contribution which he is liable to pay under the Scheme, he shall be punishable with 6 months' imprisonment or with fine which may extend to one thousand rupees or with both. It is a personal liability of the "employer."

6. As per the Kerala Relief Undertakings (Special Provisions) Act, 1961, relief is given to an undertaking during the currency of the notification declaring it to be a relief undertaking. Section 4(b) of the said Act provides that the liability or obligation of the undertaking accrued or incurred before the undertaking was declared a relief undertaking shall be suspended and the proceedings which are already commenced are to be stayed during the operation of the notification. This relief is extended to the undertaking to obviate the threat of unemployment of industrial workers. The said relief given to the undertaking cannot in any way go to help the directors or other officers of the undertaking from discharging their obligations and liabilities under the Act. The liabilities under the Act and the Scheme are the personal liabilities of the employer. The notification issued under the Kerala Relief Undertakings (Special Provisions) Act, 1961, will not in any way suspend the liabilities incurred by the "employer". In this view, persons who had the ultimate control over the affairs of the establishment cannot take refuge under the notifications issued by the State Government declaring the concern as a relief undertaking vide *Inderjit C. Parekh v. V.K. Bhat* 1974 LLJ 297.

7. The next point urged by learned Counsel appearing for the petitioners is that the prosecution has been launched in respect of claims which have already become barred. On account of bar of limitation, it is contended that the prosecutions launched against the petitioners should be quashed. This argument, I am afraid, is not tenable, in view of the decision in *Bhagirath Kanoria and Others Vs. State of M. P.*, In that case, their Lordships observed (headnote):

Non-payment of the employer's contribution to the Provident Fund before the due date is a continuing offence and, therefore, the period of limitation prescribed by Section 468 of the Code cannot have any application. The offence will be governed by Section 472 of the Code, according to which, a fresh period of limitation begins to run, at every moment of the time, during which the offence continues.

8. Hence, I find no merit in the second contention raised by learned Counsel.

9. The last contention raised by learned Counsel appearing for the petitioners is that the petitioners were not having ultimate control over the affairs of the establishment nor were they entrusted with the affairs of the establishment and so they are not liable to be proceeded against for the non-compliance with the provisions of the Act. This contention can be acted upon only if the petitioners show that they were not having the ultimate control over the establishment or that they were not entrusted with the said affairs. The complaints proceeded on the basis that petitioners Nos. 2 and 3 are the persons in charge of the establishment, M/s. Travancore Rayons Ltd. Rayonpuram, and that they were responsible for the conduct of its business. It is further averred in the complaint that the petitioners herein are required to comply with all the provisions of the Act and the family pension scheme in respect of the Travancore Rayons Ltd. In view of this averment, it cannot be said that the petitioners are not prima facie responsible for the remittance of the amounts towards the Provident Fund. In case the petitioners succeed before the Court below in showing that they had no control over the affairs of the establishment or that they were not entrusted with its affairs, they will be entitled to get an acquittal. In a proceeding u/s 482 of the Code of Criminal Procedure, this Court is not to decide disputed questions of fact. So I do not find any illegality in the initiation of prosecution against the petitioners.

10. In view of what has been stated above, I find no merit in these criminal miscellaneous cases. They are accordingly dismissed. The Court below is directed to dispose of the cases in accordance with law, as expeditiously as possible.