
(1984) 04 BOM CK 0037
In the Bombay High Court
Case No : Writ Petition No. 505 of 1983

United Western Bank Limited

APPELLANT

Vs

Central Provident Fund Commissioner and Others

RESPONDENT

Date of Decision : 10-04-1984

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 1(3), 1(5)

Citation : (1984) 2 BomCR 232

Hon'ble Judges : K. Madhava Reddy, C.J.; R.A. Jahagirdar, J

Bench : Division Bench

Advocate : F.D. Damania and R.F. Nariman, instructed by, Nanavati Tijoriwala and Co. and Mehta and Girdharilal, for the Appellant; M.I. Senthana, respondent Nos. 1 and 2, S.M. Dharap and S.S. Pathak, for the Respondent

Judgement

R.A. Jahagirdar, J.—The facts in this petition are few and there is also no dispute about the same. The point that falls for determination is also a narrow one and that is relating to the interpretation of a notification issued by the Central Government on 18th December, 1965 u/s 1(3)(b) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the "Provident Funds Act"). The petitioner is a limited company carrying on the business of banking. It is a scheduled bank having its registered and head office at Satara, a district place in the State of Maharashtra. Prior to 1972 the petitioner was carrying on the said business of banking entirely within the State of Maharashtra. However, in the year 1972 the petitioner established certain branches outside the State of Maharashtra. The question is as to whether under the express provisions contained in the notification dated 18th August, 1965 (hereinafter referred to as the "1965 notification"), the petitioner bank continued to be governed by the provisions of the Provident Funds Act. In order to appreciate this controversy, one has naturally to turn to the notification itself issued by the Central Government.

2. The Provident Funds Act extends to the whole of India except the State of

Jammu and Kashmir. Sub-section (3) of section 1 of the Provident Funds Act provides that subject to the provisions contained in section 16, the Provident Funds Act applies to every establishment which is a factory engaged in any industry specified in Schedule I and in which 20 or more persons are employed. Admittedly the petitioner is not a factory engaged in any industry in Schedule I. Moreover, without anything further being done by any authority under the Provident Funds Act, by virtue of the provisions contained in section 1(3)(a), the Provident Funds Act applies to every establishment which is a factory engaged in any industry specified in Schedule I.

3. However, Clause (b) of section 1(3) refers to any other establishment, that is, an establishment which is not a factory in any industry specified in Schedule I, which may be governed by the provisions of the Provident Funds Act if the Central Government by a notification in the Official Gazette specifies that it shall be so governed. To reproduce the words of the statute itself, the Act applies "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". Pursuant to the powers given by the provisions of section (b), the Central Government issued the notification, which is the subject-matter of interpretation before us, on 18th December, 1965. It is necessary to produce the entire notification which is as follows :

"G.S.R. 2. In exercise of the powers conferred by Clause (b) of sub-section (3) of section 1 of the Employees' Provident Funds Act, 1952 (19 of 1952), and subject to the provisions contained in section 16 thereof, the Central Government hereby specifies every bank doing business in one State or Union Territory and having no departments or branches outside that State or Union Territory and employing twenty or more persons as a class of establishments to which the said Act shall apply with effect from the 31st January, 1966."

4. From what is mentioned in the notification it is clear to us that the Central Government decided to apply the provisions of the Provident Funds Act to every bank subject to two conditions. The first condition was that the bank was doing business in only one State or Union territory and that it has no departments or branches outside that State or Union territory. Admittedly the petitioner Bank was at the relevant time doing business only in the State of Maharashtra and was not having any department or branches outside the State of Maharashtra. The second condition which is in fact a condition incorporated in clause itself was that the bank should be employing 20 or more persons. Admittedly again, the petitioner Bank was at the relevant time and is even today employing more than 20 persons. On 18th December, 1965, therefore, by virtue of the notification issued u/s 1(3)(b) of the Provident Funds Act, the Act became applicable to the petitioner.

5. It has been urged on behalf of the petitioner that since 29th August, 1974, the petitioner expanded its banking business and as much is having branches in Several states apart from the State of Maharashtra. The petitioner urges that in

view of the branching off of the business of the petitioner in more than one State, the notification issued on 18th December, 1965 has ceased to have application to the petitioner. This is so because the notification specified the satisfaction of two conditions for the Act to be applicable to a bank like the petitioner. We have already enumerated above the two conditions. The first condition was that the bank should be doing business in only one State and should not have any departments or branches outside that State. Since, according to the petitioner, the petitioner is having branches outside one State, that is, outside the State of Maharashtra one essential condition, subject to which alone the notification could apply, has ceased to exist. With the disappearance of that condition, the notification must cease to exist. It has not been contended by the petitioner that the other condition, namely, the employment of 20 or more persons does not continue to be satisfied.

6. Mr. Nariman, the learned advocate appearing for the petitioner has taken us through the petition and through the relevant provisions of law. After hearing him, we have no hesitation in upholding the contention raised on behalf of the petitioner. The language of the notification, which was undoubtedly a valid notification issued in valid exercise of the powers u/s 1(3)(b) of the Provident Funds Act is clear and, in our opinion, does not admit of any ambiguity. The notification is in respect of a bank which was doing business in only one State and which did not have any departments or branches out side that State. In order that the Provident Funds Act should continue to apply in terms of the notification, it is essential that both the conditions subject to which the Act was made applicable by the notification must continue to exist. If one of the conditions, namely, the bank having no branches outside the State ceases to exist, then naturally the applicability of the Provident Funds Act in terms of the notification must also cease. We do not see any difficulty in accepting this contention on behalf of the petitioner.

7. Mr. Sethna, the learned Advocate appearing for the Government, has, however, insisted that in view of the provisions contained in sub-section (5) of section 1, an establishment to which the Act once applies cannot go out of the provisions of this Act merely because one of the conditions mentioned has ceased to exist. The provisions of sub-section (5) of section 1 are as follows :

"An establishment to which this Act applies shall continue to be governed by this Act notwithstanding that the number of persons employed therein at any time falls below twenty."

Mr. Sethna's interpretation of the provisions contained in sub-section (5), in our opinion, is erroneous. What the provisions of that sub-section provide is that if the Act is applied to an establishment, then the establishment will not cease to be governed by the provisions of this Act on the ground that the number of persons employed therein at any time falls below 20. In order to understand the significance of this provisions, we must again return to the provisions of sub-section (3). Sub-section (3) says that the Act applies to every establishment

which is a factory in any industry specified in Schedule I and in which 20 or more persons are employed. If, therefore, in a factory at any time 20 or more persons are employed, then the Provident Funds Act will apply to that factory. But if subsequently the number of persons employed in that factory falls below 20, despite this decline in the number of persons employed, the Act shall continue to apply in view of the provisions contained in sub-section (5). In other words, the exit from the provisions of the Provident Funds Act is barred only in that case where the number of persons falls below 20.

8. It is possible to suggest that if in the instant case the number of persons employed by the petitioner had fallen below 20, then by virtue of the provisions contained in sub-section (5) of section 1 the petitioner would not have been able to claim that the Act does not apply to it. But if the Act has been made applicable, as it has been done in the present case, subject to the satisfaction of the two conditions which from the very language of the notification are cumulative, then even if a one condition cease to exist, then the applicability of the Act also must cease. This is, in our opinion, clear from the language of the notification itself.

9. Mr. Sethna has relied upon *Daulat Ram v. Regional Provident Fund Commissioner* 1977 Lab.I.C. 1010, in order to contend that once the Act is applied there is no escape for an employer from the provisions of that Act unless it is shown that the Act itself provides for such an escape. The reliance by Mr. Sethna on *Daulat Ram*'s case, in our opinion, is misconceived. This judgment deals with the interpretation of sub-section (5) of section 1 before its amendment in the year 1960. Prior to its amendment, it provided that an establishment to which the Act applied shall continue to be governed by the Act notwithstanding that the number of persons employed therein at any time fell below 20. However, there was a proviso which said that where for a continuous period of not less than one year the number of persons employed therein had been less than 15, the employer might cease to give effect to the provision of the Act, if he so desired, by following the procedure mentioned in the proviso. It may be noted that the language of the main part of sub-section (5), as it stood prior to the amendment, is the same as it stands today. However, the proviso which found its place originally has been deleted after the amendment in 1960. If anything, sub-section (5), as it stood then, and sub-section (5), as it stands today, suggest an intention which is contrary to the one propounded by Mr. Sethna. Sub-section (5) provides, as it also provided earlier, that the establishment which is governed by the provisions of the Act by virtue of having 20 or more persons in its employment cannot cease to be governed by it by the subsequent decline in the number of persons employed; it does not refer to any other condition, a condition that might be incorporated by notification issued u/s 1(3)(b) of the Act. If it were the intention of the Legislature that an establishment which is governed by the provisions of the Provident Funds Act on any day should not cease to be governed by any subsequent development, nothing would have been easier for the Legislature than from so providing. Sub-

section (5) would have been suitably worded. For example, it could have been mentioned that an establishment to which this Act applies shall continue to be governed by this Act despite any change in the circumstances. On the other hand, the Legislature in its wisdom provided that the applicability of the Act shall continue even if the number of persons declined below the stipulated figure of 20. It is only, therefore, that when the number of persons employed falls below 20 that the Legislature insisted that the Act shall continue to apply to an establishment to which it had become applicable earlier. Some attempt was made by the advocates appearing on behalf of respondents Nos. 3 and 4 to persuade us to interpret the provisions of the notification in the light of what they regarded as the object of the Act and the general scheme underlying the provisions of the Act. We have remained unimpressed by the attempt because, in our opinion, the language of the notification which has been issued in valid exercise of the powers contained in section 1(3)(b) does not admit of any ambiguity and, therefore, it is wholly unnecessary to seek to notice the object of the Act or the underlying scheme of the provisions of the Act.

10. Mr. Dharap, the learned advocate appearing for respondent No. 3. which is the Union of Workmen employed by the petitioner Bank, has referred to *Mohmedalli and Others Vs. Union of India (UOI)* and *Another*, , and in particular has invited our attention to the following observations contained in paragraph 6 of the judgment :

"it cannot be asserted that the powers entrusted to the Central Government to bring within the purview of the Act such establishments or class of establishments as the Government may by notification in the Official Gazette specify is uncontrolled and unanalyzed. The whole Act is directed to institute provident funds for the benefit of employees in factories and other establishments, as the preamble indicates. The institution of provident fund for employees is too well-established to admit of any doubt about its utility as a measure of social justice. The underlying idea behind the provisions of the Act is to bring all kinds of employees within its fold as and when the Central Government might think fit, after reviewing the circumstances of each class of establishments."

Mr. Dharap canvasses the view that while interpreting the provisions of the Act or of any other notification issued pursuant to the provisions of the Act these observations of the Supreme Court should be borne in mind and the provisions of the notification should be liberally construed so as to see that the maximum number of employees is governed by the provisions of this Act.

11. We are unable to accept this wide interpretation which Mr. Dharap has placed upon the judgment of the Supreme Court in *Mohmedali's* case. To us it is clear that the Act is made applicable by the provisions of section 1(3)(a) to a particular class of establishments. It can be made applicable by virtue of the provisions of section 1(3)(b) to other class of establishments by a notification validly issued by the Central Government. If the Central Government Chooses to

issue a notification applying the provisions of the Act to a class of establishments subject to certain conditions, the continued satisfaction of those conditions is the sine qua non for the continuance of the applicability of the Act itself. On the facts of this case, we have noticed that one of the conditions subject to which the Act was made applicable to the petitioner's establishment has ceased to exist. If this is so, the necessary consequence is that the applicability of the Act by virtue of the notification must cease.

12. Mr. Dharap informs us that as a result of the cessation of the applicability of the Act to the petitioner, it is conceivable, as the petitioner itself has mentioned in paragraph 8-A of the petition, that it will reduce the contribution of the provident fund. If such a thing happens, it may amount to contravention of section 9A of the Industrial Disputes Act and an illegality should not be allowed to occur as a result of any interpretation that we might choose to place on a notification issued by the Government.

13. In our opinion, this submission is not well-founded. Section 9A of the Industrial Disputes Act does not totally bar any change which the employer may decide to bring about. Secondly, we are not sure whether any change that might occur as a result of the cessation of the Act to the petitioner company will be governed necessarily by the provisions of section 9A because this change is not by an act of the employer but by operation of law. However, we refrain from expressing any final opinion on this subject. But the apprehensions of Mr. Dharap do not change the meaning which is clear from the language itself of the notification which we are called upon to interpret.

14. Mr. Pathak appears for the fourth respondent, which is the United Western Bank Officers' Organisation. He has supported the arguments of Mr. Sethna and Mr. Dharap. He also suggested that the applicability of the Act should be continued to the branches which are situated within the State of Maharashtra. It is not possible to accept this suggestion because it will amount to rewriting the notification issued by the Central Government u/s 1(3)(b), which we have no jurisdiction to do.

15. Though the petitioner Bank started having branches outside the State of Maharashtra some years earlier, on the facts of this case we are of the opinion that the declaration that the Act has ceased to apply to the petitioner Bank should not be given with retrospective effect. This is especially so when the petitioner Bank has till the end of December 1983 continued to make contribution to the fund. After hearing Mr. Nariman for the petitioner, we are of the opinion that the declaration that the Act will cease to have application to the petitioner Bank should be made with effect from 1st April, 1984.

16. In the result, this petition succeeds. It is hereby declared that the provisions of the Employees' Provident Funds Act Miscellaneous Provisions Act, 1952, have ceased to have application to the petitioner Bank with effect from 1st April, 1984. There will be no order as to costs.