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In the Bombay High Court

Case No : Appeal No. 411 of 1981

V. Venkatesh — APPELLANT

Vs

Union of India (UOI) and others — RESPONDENT

Date of Decision : 24-06-1987

Acts Referred:
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 16, 2A, 7A

Citation : (1987) MhLj 738

Hon'ble Judges : S.P. Bharucha, J;S.M. Daud, J

Bench : Division Bench

Advocate : S.M. Dharap, for the Appellant; Liladhar Vyas with V.N. Lokur for Respondent Nos. 1 and 2, K.H. Mody instructed by M/s. Mulla and Mulla and Craigie Blunt and Caroe, for the Respondent

Final Decision : Allowed

Judgement

S.P. Bharucha, J.—The appeal assails the judgment and order dismissing the Appellant''s writ petition.

2. The Appellant joined the service of the third Respondent as a Stenographer on 3rd May 1965. At that time the third Respondent employed only about 10 persons. On 4th October 1967 the third Respondent was leased from Alfa Rubber Company a factory wherein rubber products were manufactured and about 24 persons were employed. On 29th December 1967 an Inspector of the Employees'' Provident Fund called upon the third Respondent and required its registration under the provisions of the Employees'' Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter called "the Act"). Pursuant thereto the third Respondent was registered under the Act.

3. A report made in connection with an employee of the third Respondent, which is annexed to the petition, shows the name of the establishment to be that of the third Respondent. It notes its office address, whereat the Appellant worked, and of the factory which it had leased from the Alfa Rubber Company. The third

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Respondent is shown as classified u/s l(3)(a) of the Act in the class dealing with rubber and rubber firms. The previous owner or occupier of its premises is shown as Alfa Rubber Company having the Code No. MH-6272.

4. On 10th July 1969 the factory run by the third Respondent was permanently closed down. From that point of time onwards, the third Respondent ceased to make the deductions of salary required under the Act and to comply therewith on the ground that its provisions no longer applied. In May 1974 the services of the Appellant came to be terminated. There was some dispute in this regard and the Appellant filed a suit in the City Civil Court at Bombay claiming reinstatement, arrears of salary and the like. A consent decree was obtained in the suit on 25th July 1978 whereunder the Appellant received the sum of Rs. 12,500/- in full and final settlement of his claim in the suit.

5. During the pendency of the proceedings in the City Civil Court the Appellant made inquiries in regard to the application to him of the Act for the period July 1969 to May 1974. Ultimately, on 27th June 1979 he filed the writ petition and sought a direction against the Regional Provident Fund Commissioner (the second Respondent) to hold an inquiry under the provisions of Section 7-A of the Act to determine the amount payable to him under the Act by the third Respondent and a direction against the third Respondent to make payment thereof.

6. At a very early stage of the hearing of the writ petition the second Respondent was directed to hold the inquiry u/s 7-A. It was held and, on 24th September 1979 the second Respondent made the inquiry report. He said therein that, from his records, it was seen that the third Respondent was covered upto 10th July 1969. Since the factory was closed from that date it was immaterial that the Appellant had remained in the third Respondent''s service "as on closure of a covered factory it goes out of the purview of the Employees'' Provident Fund Act and the Scheme framed thereunder." Accordingly, the second Respondent found that nothing was due to the Appellant from the third Respondent.

7. The writ petition was then amended to impugn the inquiry report. The writ petition was heard and disposed of by the learned Single Judge on 24th November 1981. The learned Judge found it obvious that once the establishment as contemplated by Section l(3)(a) of the Act came into existence then the allied branches or the departments of such establishment got the advantage of the Act because of Section 2-A. Such advantage was because of the existence or the continuance of the establishment. Once the establishment was closed or ceased to function the departments or the branches could not claim the advantage of the Act. A plain reading of sub-section (5) of Section 1 made it clear that to claim application of the Act notwithstanding the fact that the number of employees fell below twenty the existence or continuance of the establishment was necessary. Counsel for the petitioner before the learned Judge had been unable to point out to him any provision of the Act which indicated that even after the cessation of the establishment the allied departments or branches would be entitled to claim

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the benefit of the provisions of the Act. The learned Judge, therefore, dismissed the Appellant''s writ petition.

8. It is necessary first to note certain provisions of the Act. Sub-sections (3) and (5) of Section 1 read thus :

"1(3). Subject to the provisions contained in Section 16 it applies in the first instance to all factories engaged in any industry specified in Schedule I in which 50 or more persons were employed, but the Central Government may,. after giving not less than 2 months'' notice of its intention to do so, by notification in the Official Gazette, apply the provisions of this Act, to all factories employing such number of persons less than 50 as may be specified in the notifications and engaged in any such industry."

"1(5). 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 fails below twenty."

Section 2-A declares that where an establishment consists of different departments or has branches, such departments or branches are to be treated as parts of the same establishment. Section 7-A contemplates an inquiry to determine the amount due under the Act by an employer.

9. It is necessary to mention that sub-section (5) of Section 1 was introduced into the Act only by Amendment Act 46 of 1960. When it was introduced it contained a proviso which read thus :

"Provided that where for a continuous period of not less than I year the number of persons employed therein has been less than 15, the employer in relation to such as establishment may cease to give effect to the provisions of this Act and any scheme framed thereunder with effect from beginning of the month following the expiry of the said period of 1 year but he shall within 1 month of the date of such cessation, intimate, by registered post, the fact thereof to such authority as may be specified by the appropriate government in that behalf."

The proviso was omitted by Amendment Act 16 of 1971. The Statement of Objects and Reasons for Amendment Act No. 46 of 1960, in so far as it concerned sub-section (5) of Section 1, read thus :

"In order to ensure that the establishments once covered under the Act do not go out of the purview of the Act merely due to a small reduction in their strength, provision is being made that an establishment once covered under the Act will continue to be so covered despite a reduction in the employment strength, except where the employment strength is reduced to less than 15 and remains so for a period of one year continuously."

10. Mr. Dharap, learned counsel for the Appellant, drew our attention to the judgment of a Division Bench of this Court in The State Vs. Hathiwala Textile Mills and Others, . This judgment, it must be noted at the outset, was delivered before

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the introduction of sub-section (5) of Section 1 into the Act. It was observed by Gokhale, J. that the point which called for consideration was as to the construction of Section 1(3). It had been contended that on the dates of the alleged offences under the Act the workers in the factory numbered less than fifty (which was then the relevant number) and that, therefore, the provisions of the Act ceased to apply. It was held that a reasonable construction of sub-section (3) was that the Legislature had contemplated that the Act was to apply to all factories in which fifty or more persons were employed. Sub-section (3) dealt with the initial application of the Act. It had nothing to do with the continuance of the application of the Act and Counsel for the respondents before the Division Bench had not been able to draw attention to any provision of the Act which would justify his argument that as soon as the factory ceased to employ fifty workers or more but employed less than fifty workers the Act would cease to apply and the workers would cease to get the benefits accruing to them under its provisions. In fact, the provisions of the Act showed that it was intended for the benefit of the workers and assured them the continuance of those benefits provided they had the necessary qualification of one year''s continuous service. If the arguments on behalf of the respondents were to be accepted the workers would be constantly exposed to the peril of losing the benefits under the Act. It would defeat the rights of the workers which the Court had to, try and prevent. Dixit J. delivering the concurring judgment, drew attention to the obvious answer to the contention that the Act had ceased to apply because on the date of the alleged offences the number of workers in the factory was less than fifty. The obvious answer was that there was no provision in the Act which said that the Act which had been applied to a factory would cease to apply to it as sewn as the employees were less than fifty. "Once the Act applies" he said, "it must continue to apply."

11. Sub-section (5) of Section 1 declares the law as found by the Division Bench in the aforementioned case. The reason why it was thought necessary to declare it in the Act would appear to be found in the proviso to the sub-section. The proviso gave an employer the option of opting out of the Act if for a continuous period of not less than ''one year the number of persons employed in his establishment had been less than 15. What is significant is that while the proviso was omitted in 1971, the substantive portion of sub-section (5) continued to remain on the statute book to declare the law. as found by the Division Bench.

12. Mr. Vyas, learned Counsel for the Union of India (the first Respondent) and the second Respondent, laid stress on the fact that sub-section (5) of Section I used the word "applies." He submitted that it was significant that even when the proviso thereto was omitted by Amendment Act 16 of 1971 the word "applies" was not substituted by the word "has been applied." This indicated that for the application of the Act there had to be in existence a factory covered by Schedule I and that the moment there was no such a factory the application of the Act automatically ceased. This submission cannot be accepted. The word "applies" covers all establishments to which the Act "has been applied" and continues to

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apply. The plain meaning of sub-section (5) of Section 1 is that once the Act has been made applicable to an establishment it shall continue to apply to that establishment regardless of the fact that the number of persons employed therein has fallen below the requisite number.

13. It is important to make a distinction between the requisites for the initial application of the Act and for its continued application. The existence of a factory satisfying the requirement of Schedule I is an initial or threshold requirement. So is the requirement of 20 or more employees. Once these requirements are met the Act becomes applicable. It becomes applicable to all departments and branches of the establishment, for they are, as Section 2-A makes clear, part of the establishment. We asked counsel for the Respondents to show us any provision of the Act which dealt with the circumstances under which it would cease to apply to an establishment or even any provision of the Scheme under the Act which dealt with what had to be done upon the Act ceasing to apply to an establishment. No such provision has been pointed out to us. There is no provision in the Act which deals with the cessation of its application. When a statute sets out the requirements for its application but not for the cessation of its application, it must be held that once it applies it will continue to apply.

14. Mr. Dharap drew our attention to the judgment of a Division Bench of the Karnataka High Court in Regional Provident Fund Commissioner Vs. Ratna Enterprises, . This was a case where two cinema theatres had been brought within the purview of the Act. Thereafter the proprietrix constituted a partnership with her children and, subsequently, the partnership was dissolved and the assets and liabilities were divided among the partners. Consequent thereupon the application of the Act was challenged on the ground that the number of workmen employed in theatre was less than 20. The court upheld the contention that once the provisions of the Act had been introduced in respect of the employees of the theatres under the ownership of the partnership subsequent reduction in the number of employees below twenty, whatever may be the reason, did not make any difference. Even if the two theatres had subsequently gone into different hands and the number of employees in each of them happened to be less than twenty, no exception to the applicability of the Act could be taken in view of Section 1(5) of the Act.

15. The Kerala High Court in two judgments has taken a view different from that taken by the Karnataka High Court. The first of the two judgments was delivered by a Division Bench in Mohammed Kutti (K.M.) Vs. Regional Provident Fund Commissioner and Others, . It was approved by a Full Bench in T. A. Zainulabdeen vs. R.P.F. Commr. 1975 Lab. I.C. 412. The Full Bench noted that the question before it was whether there had been a real and bona fide division which disrupted the original establishment and gave birth to new, separate and distinct establishment. When a disruption had taken place which gave rise to a distinct and separate are establishment the distinct and separate establishment could not be treated as a department or branch of another establishment. In

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other words, the Kerala High Court took the view that if a new establishment had come into being there would be no continuation of the application of the Act to it.

16. We are not concerned with this aspect of the law because it is no one''s case that there was at any time a change of ownership of the establishment of the third Respondent.

17. We may now briefly refer to the judgment of the Allahabad High Court in Ramesh Metal Works and Another Vs. State, . A Full Bench of the Allahabad High Court held that the object of the Act was to provide adequate security to workers in old age and infirmity. It was a welfare legislation and it should be so construed as to give necessary effect to that object. Thus construed, the phrase "in which fifty or more persons are employed" in Section 1(3) must have been intended by Parliament to refer to the point of time of the initial application of the Act to an establishment.

18. This takes us to the judgment of the Supreme Court in The Associated Industries (P) Ltd. Vs. The Regional Provident Fund Commissioner, Kerala Trivandrum, . It is necessary to note at the outset what arose for consideration. It was whether the factory run by the appellant fell within Section 1(3) of the Act. The question, therefore, was of the initial application of the Act. It was in this context that the sentences quoted in the impugned judgment were used. The Supreme Court judgment nowhere considers whether the initial requirement is also a requirement for the continued application of the Act. It was the learned Judge who came to that conclusion and it was in this behalf that he pointed out that counsel for the petitioner before him had not been able to point out any provision of the Act which suggested the contrary. The question, rather, is whether there is any provision of the Act which sets out when the Act, which has been applied to an establishment, shall cease to apply to it. There is no such provision.

19. When a statute sets out the requirements for its application but does not in any manner provide for the conditions in which it shall cease to apply, the Court must hold that the Legislature intended the continuance of the application of the statute.

20. In the result, we are of the view that the Act continued to apply to the third Respondent on and after 10th July 1969 and until May 1974 when the services of the Appellant were terminated.

21. Accordingly, the appeal is allowed, the impugned judgment and order are set aside and the petition is made absolute with this direction : The second Respondent shall hold an inquiry in the manner prescribed by the provisions of Section 7-A of the Employees'' Provident Fund Act, 1952, to determine the amount payable by the third Respondent to the Petitioner for the period 11th July 1969 to 31st April 1974. The inquiry shall be conducted expeditiously, after adequate notice to the Petitioner and the third Respondent, and shall, as far as is possible, be concluded by a report within 6 weeks. The third Respondent shall

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pay to the Appellant such amount, if any, as is fount! payable thereby within 4 weeks of receipt of the order on the inquiry.

22. No order as to costs.

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