

(1987) 11 KL CK 0042

In the High Court Of Kerala

Case No : O.P. No. 8207 of 1986 and 1975, 7374 etc. of 1987

Vishwanatha Pai and Others

APPELLANT

Vs

Regional Provident Fund Commr.

RESPONDENT

Date of Decision : 06-11-1987

Acts Referred:

Cine-Workers and Cinema Theatre Workers (Regulation of Employment) Act, 1981 —
Section 24

Constitution of India, 1950 — Article 14

Citation : (1994) 3 LLJ 1044

Hon'ble Judges : Varghese Kalliath, J; Balakrishna Menon, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Balakrishna Menon, J.—In this batch of writ petitions the petitioners who are all owners of cinema theatres challenge the validity of Section 24 of the Cine-Workers and Cinema Theatre Workers (Regulation of Employment) Act, 1981 (hereinafter referred to as the Cinema Theatre Workers Act) and the notification dated 30.4.1986 of the Government of India, Ministry of Labour (produced as Ext.P1 in O.P. 8207 of 1986) amending the Employees' Provident Funds Scheme, 1952 issued under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the Employees Provident Funds Act).

2. The Employees Provident Funds Act came into force on 14.3.1952. The Preamble of the Act states that it is an Act to provide for the institution of provident funds, family pension fund and deposit linked insurance fund for employees in factories and other establishments. The Act by Section 1(13) makes it applicable to every factory referred to in Clause (a) and also to any other establishment referred to in Clause (b) employing twenty or more persons or class of such establishments which the Central Government may, by notification in the Official Gazette, specify in that behalf. The schemes under Sections 5, 6-A and 6-C of the Employees Provident Funds Act providing for

employees provident fund, employees family pension and for employees deposit linked insurance were issued in 1952. The Act by notification of the Government of India issued on 31.7.1961 u/s 1(3) was made applicable to cinema theatres employing 20 or more persons.

3. The Cinema Theatre Workers Act received the assent of the President on 24-12-1981 and was published in the Gazette on the same day. The Act came into force with effect from 1-10-1984. The Preamble of the Act says that it is to provide for the regulation of the conditions of employment of certain cine-workers and cinema theatre workers and for matters connected therewith. Section 2(a) defines "cinema theatre" to mean a place which is licensed under part III of the Cinematograph Act, 1952 or under any other law for the time being in force in a State for the exhibition of cinematograph films. Section 2(c) defines "cine-worker" to mean an individual employed directly or through any contractor or other person, in or in connection with the production of a feature film a work as an artist (including actor, musician or dancer) or to do any work skilled, unskilled, manual supervisory, technical, artistic or otherwise, and whose remuneration with respect to such employment in or in connection with the production of such feature film does not exceed where such remuneration is by way of monthly wages a sum of one thousand six hundred rupees per month and where such remuneration is by way of a lump sum, a sum of fifteen thousand rupees. Section 16 of the Cinema Theatre Workers Act makes the Employees Provident Funds Act applicable to every cine-worker who has worked in not less than three feature films with one or more producers "as if such cine worker were an employee within the meaning of that Act". Section 24 of the Cinema Theatre Workers Act, the validity of which is challenged in these writ petitions enacts;

"The provisions of the Employees Provident Funds and Miscellaneous Provisions Act, 1952, as in force for the time being shall apply to every cinema theatre in which five or more workers are employed on any day, as if such cinema theatre were an establishment to which the aforesaid Act had been applied by a notification of the Central Government under the provisions to Sub-section (3) of Section 1 thereof, and as if each such worker were an employee within the meaning of that Act."

The notification of the Government of India amending the scheme under the Employees Provident Funds Act referred to above was issued in conformity with Section 24 of the Cinema Theatre Workers Act.

4. The validity of Section 24 of the Cinema Theatre Workers Act and the notification aforesaid are challenged as violative of Article 14 of the Constitution. According to the petitioners the classification of cinema theatres having five or more workers as an establishment covered by the Employees Provident Funds Act as against other establishments having twenty or more workers is discriminatory and is opposed to Article 14 of the Constitution. Since Cinema theatre is not a factory, it will fall only within the meaning of the expression "establishment" and according to the petitioners there is no reasonable basis for

the classification treating cinema theatres separately to fall under the coverage of the Act if it employs five or more workers. It is also contended that a cine-worker as defined in the Act is deemed to be an employee for the purpose of the Employees Provident Funds Act and a film studio producing cinematograph films will be an establishment covered by the Employees Provident Funds Act if only it employs more than twenty workers as against the cinema theatre which would fall under the coverage if it employs only five workers.

5. The Preamble of the Employees Provident Act referred to above shows that the Act is to provide for the institution of provident funds family pension fund and deposit-linked insurance fund for the benefit of employees in factories and other establishments. The Act is intended for the benefit of the employees as is clear from its objects and reasons extracted below:

"The question of making some provision for the future of the industrial worker after he retires or for his dependent in case of his early death, has been under consideration for some years. The ideal way would have been provision through oldage and survivors, pensions as has been done in the industrially advanced countries. But in the prevailing conditions in India the institution of a pension scheme cannot be visualised in the near future. Another alternative may be for provision of gratuities after a prescribed period of service. The main defect of a gratuity scheme however is that amount paid to a worker or his dependents would be small, as the worker would not himself be making any contribution to the fund. Taking into account the various difficulties financial and administrative, the most appropriate course appears to be the institution compulsorily of contributory provident funds in which both the worker and the employer would contribute. Apart from other advantages, there is the obvious one of cultivating among the workers a spirit of saving something regularly. The institution of a provident fund of this type would also encourage the stabilisation of a steady labour force in industrial centers."

It is a legislation for the benefit of the weaker sections of the society and the beneficial legislation is made applicable to cinema theatres if it employs five or more workers. It is well established that while Art. 14 forbids class legislation, it does not forbid reasonable classification for the purpose of legislation. In order to pass the test of permissible classification two conditions must be fulfilled viz., (1) classification must be founded on an intelligible Differentia which distinguishes persons or things that are grouped together from others left out of the group and (2) the differentia must have rational nexus to the object sought to be achieved by the legislation. The classification may be founded on different bases; it may be geographical or according to objects or occupations or the like. The Supreme Court in *D.S. Nakara and Others Vs. Union of India (UOI)*, stated at page 318:

"The thrust of Article 14 is that the citizen is entitled to equality before law and equal protection of laws. In the very nature of things the society being composed of unequals a welfare State will have to strive by both executive and legislative action to help the less fortunate in the society to ameliorate their condition so

that the social and economic inequality in the society may be bridged. This would necessitate a legislation applicable to a group of citizens otherwise unequal and amelioration of whose lot is the object of State affirmative action. In the absence of doctrine of classification such legislation is likely to flounder on the bed rock of equality enshrined in Article 14. The Court realistically upraising the social stratification and economic inequality and keeping in view the guidelines on which the State action must move as constitutionally laid down in Part IV of the Constitution, evolved the doctrine of classification. The doctrine was evolved to sustain a legislation or State action designed to help weaker sections of the society or some such segments of the society in need of succour."

In *The State of Gujarat and Another Vs. Shri Ambica Mills Ltd., Ahmedabad and Another*, the Supreme Court stated at page 678.

"In the utilities tax and economic regulation cases, there are good reasons for judicial self-restraint if not judicial deference to legislative judgment."

In *Hoechst Pharmaceuticals Ltd. and Others Vs. State of Bihar and Others*, the Supreme Court stated at page 97:

"On questions of economic regulations and related matters, the court must defer to the legislative judgment."

In *G.K. Krishnan and Others Vs. State of Tamil Nadu and Others*, the Supreme Court held:

"In the context of commercial regulation Article 14 is offended only if the classification rests on grounds wholly irrelevant to the achievement of the objective and this lenient standard is further weighted in the State's favour by the fact that a statutory discrimination will not be set aside if a state of facts may reasonably be conceived by the Court to justify it.

In *R.K. Garg v. Union of India* (1981) 4 SCC 677: AIR 1981 SC 2138 the Supreme Court, considering the validity of the Special Bearer Bonds (Immunities and Exemptions) Act, 1981 stated at page 690:

"Another rule of equal importance is that laws relating to economic activities should be viewed with greater latitude than laws touching civil rights such as freedom of speech, religion etc. It has been said by no less a person than Holmes J. that the legislature should be allowed some play in the joints, because it has to deal with complex problems which do not admit of solution through any doctrinaire straitjacket formula and this is particularly true in case of legislation dealing with economic matters, where having regard to the nature of the problems required to be dealt with, greater play in the joints has to be allowed to the legislature. The Court should feel more inclined to give judicial deference to legislative judgment in the field of economic regulation than in other areas where fundamental human rights are involved."

It is further stated at page 691:

"The Court must always remember that "legislation is directed to practical problems, that the economic mechanism is highly sensitive and complex, that many problems are singular and contingent, that laws are not abstract propositions and do not relate to abstract units and are not to be measured by abstract symmetry"; "that exact wisdom and nice adoption of remedy are not always possible" and that "judgment is largely a prophecy based on meager and uninterrupted experience."

In *Municipal Corporation of the City of Ahmedabad and Others Vs. Jan Mohammed Usmanbhai and Another*, it is stated at page 32:

"There is always a presumption in favour of constitutionality of an enactment and the burden is upon him who attacks it, to show that there has been a clear violation of the constitutional principles. The courts must presume that the legislature understands and correctly appreciates the needs of its own people, that its laws are directed against problems made manifest by experience and that its discriminations are based on adequate grounds. It must be borne in mind that the legislative is free to recognise degrees of harm and may confine its restrictions to those cases where the need is deemed to be the clearest, and finally that in order to sustain the presumption of constitutionality the court may take into consideration matters of common knowledge, matters of common rapport, the history of the times and may assume every state of facts which can be conceived to be existing at the time of legislation.""

6. The classification of cinema theatres as a separate class for the purpose of coverage under the Employees' Provident Funds Act cannot be said to be discriminatory or violative of Article 14 of the Constitution. As is clear from the objects and reasons of the Act and its provisions, the Act is for the benefit of employees who form part of the economically weaker sections of the society and Section 24 of the Cinema Theatre Workers Act, 1981 extending the coverage of the Employees' Provident Funds Act to cinema theatre employing five or more workmen cannot therefore be said to be in any way discriminatory or opposed to Article 14 of the Constitution. The notification issued by the Government of India extending the coverage of the scheme under the Act to cinema theatres is also perfectly valid.

We see no merit in these writ petitions. The Original Petitions are accordingly dismissed. No costs.