
(1982) 03 CAL CK 0034
In the Calcutta High Court

Visva Bharati

APPELLANT

Vs

Regional Provident Fund Commissioner

RESPONDENT

Date of Decision : 24-03-1982

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 1, 16, 2
VISVA BHARATI ACT, 1951 — Section 4, 6

Citation : (1983) 1 LLJ 332

Hon'ble Judges : P.C. Borooah, J

Bench : Single Bench

Judgement

This Judgment has been overruled by : Andhra University Vs. Regional Provident Fund Commissioner of Andhra Pradesh and Others, AIR 1986 SC 463 : (1985) 51 FLR 605 : (1986) LabIC 103 : (1986) 1 LLJ 155 : (1985) 2 SCALE 752 : (1985) 4 SCC 509 : (1985) 3 SCR 582 Supp : (1986) 1 UJ 31

P.C. Borooah, J.—The petitioner, Visva Bharati, is a University incorporated by an Act of Parliament being the Visva Bharati Act, 1951 (hereinafter referred to as "the Act") and is situated at Sahtiniketan in the District of Birbhum in West Bengal. The University imparts education in the Humanities and Science streams and also gives practical training in various faculties, such as agriculture, carpentry, etc. For the purpose of imparting education in agriculture the University has an Agricultural College which prepares students for the Degrees of B.Sc. and M.Sc. in Agriculture. For experimental purposes and practical training of the students the University maintains an agricultural farm, the basic purpose of which is to carry on experimental research and impart practical training to the students of Agriculture. There is also experimental sowing of fodder and crops, such as paddy and wheat, and some of the products of the said farm are sold to the employees of the University.

2. As a part of its activities, the University also trains villagers in woodcraft and for this purpose it has a woodcraft wing constituted under the Institute of Rural Education known as "Silpa Sadan". The basic purpose of this "Silpa Sadan" is to

train villagers of the surrounding villages in woodcraft and carpentry. The products made by the trainees are used in the different departments of the University.

3. The University being a residential one has to maintain a Hospital known as the Pearson Memorial Hospital. No outsider is entitled to any benefit from this Hospital.

4. Since the Provident Fund authorities sought to apply the provisions of the Employees' Provident Funds & Miscellaneous Provisions Act, 1952 (hereinafter referred to as "the Act") to the University, the latter wrote a letter on July 17, 1979 to the Ministry of Education and Social Welfare, Department of Education, asking for clarification as to whether the provisions of the Act had any application to the University or any of its departments, and if so, praying for an exemption u/s 16(2) of the Act. A copy of this letter is Annexure "A" to the petition.

5. The University received a reply dated May 31/June 3, 1980 enclosing a letter of the Central Provident Fund Commissioner to the Secretary, Ministry of Labour. It was contended in the said letter that whilst the University was not covered by the Act, the "Silpa Sadan", the Hospital and the Agricultural Farm were covered from the various dates as mentioned in said letter. It was also stated that the exemption contemplated u/s 16(2) of the Act was only given on financial grounds. A copy of this letter is annexed to the petition and marked with the letter "B".

6. Thereafter the Provident Fund authorities inspected the books of the University and a notice of demand dated June 24, 1981 was received claiming a total sum of Rs. 76,479.96 P. under various heads for the period from January 1975 to June 1981 in respect of the agricultural farm maintained by the University. A copy of this notice of demand is Annexure "C" to the petition. On being verbally directed by respondent 1 that the same should be paid, the petitioner paid the said sum under protest on July 14, 1981.

7. Thereafter the University received another notice of demand dated 6th August, 1981 claiming a total sum of Rs. 51,914.75 p. for period from September 1973 to January 1981 in respect of the Pearson Memorial Hospital. A copy of this notice of demand is Annexure E to the petition.

8. In this writ petition the petitioner has prayed that the notices of demand referred to above be quashed and the Provident Fund authorities be directed to exempt the University from the application of the Act under the provisions of Section 16(2) of the Act.

9. Mr. P.P. Ginwalla, appearing on behalf of the petitioner, has submitted that the University which was incorporated under the Visva-Bharati Act, 1951 was constituted as a body corporate as a unitary teaching and residential University as laid down in Section 4 of the said Act, and the University as a whole should be taken into account in considering the question whether it would come under the

provisions of the Act. Mr. Ginwalla has also submitted that the University is the establishment and not the agricultural farm, the Silpa Sadan or the Pearson Memorial Hospital, and the University cannot be brought within the purview of the Act. Mr. Ginwalla has referred to a decision of the Madras High Court in the case of *Vittaladas Jagannathdas v. Regional Provident Fund Commissioner, Madras*, reported in [1966 I L.L.J. 240].

10. Mr. Sibdas Banerjee appearing on behalf of the respondents has opposed this Rule. His submission is that by virtue of appropriate notifications issued u/s 1(3) (b) of the Act the provisions of the Act have been applicable to wood workshops with effect from April 30, 1970, to hospitals run by any individuals or institutions with effect from August 31, 1973 and to agricultural farms with effect from December 31, 1974; the Silpa Sadan, the Pearson Memorial Hospital and the Visva Bharati University Agricultural Farm, falling under the aforesaid heads, are automatically covered under the provisions of the Act.

11. Mr. Banerjee has drawn my attention to a decision of the Andhra Pradesh High Court in the case of *Regional Provident Fund Commissioner, Andhra Pradesh, Hyderabad v. Osmania University*, reported in 1973 Lab IC 912. Mr. Banerjee has also referred to a decision of the Allahabad High Court in the case of *The Delhi Cloth and General Mills Co. Ltd., Delhi Vs. The Regional Provident Fund Commissioner, U.P.*, .

12. The Visva-Bharati University was incorporated under the provisions of the Visva-Bharati Act, 1951. Section 4 of the Act which deals with the incorporation of the University reads as follows:

4. Incorporation: - The first Acharya (Chancellor) and Upacharya (Vice-Chancellor) of the University who shall be the persons appointed in this behalf by the Central Government by notification in the Official Gazette, and the first members of the Samsad (Court) the first members of the Samsad (Court) and all persons, who may hereafter become or be appointed as such officers or members, so long as they continue to hold such office or membership, are hereby constituted a body corporate as a unitary, teaching and residential University by the name of Visva-Bharati, and shall have perpetual succession and a common seal, and shall sue and be sued by that name." u/s 6 of the said Act the powers of the University were laid down, Sections (e) of Section 6 reads as follows:

to provide for the promotion of rural reconstruction, social welfare, development of cottage industries, and all other nation-building activities and works of public benefit;

13. Under this sub-section the University was authorised to set up both the Silpa Sadan and the agricultural farm. Moreover, when the University was preparing students for both the Bachelor's and Master's Degrees in Agriculture, to impart practical training to the students an agricultural farm must be deemed to be essential. The Silpa Sadan was also set up by the University for the development

of cottage industry and for imparting training to the rural people in carpentry and woodcraft. The Pearson Memorial Hospital was not meant for outsiders and was certainly necessary as University was a residential one.

14. The provisions of the Act can be sought to be made applicable, if at all, to the agricultural farm, the Silpa Sadan and the Pearson Memorial Hospital by virtue of Section 1(3)(b) of the Act which reads as follows:

Subject to the provisions contained in Section 16, it applies:

* * * * (b) to any other establishment employing twenty or more persons or class of such establishment which the Central Government may, by notification in the Official Gazette, specify in this behalf:

15. From the aforesaid sub-section it is clear that the provisions of the Act could have been made applicable, if the Central Government so desired, to the University which clearly is an establishment. That the Act contemplates or takes into account that an establishment can have departments or branches is clear from the definition of "appropriate Government" in Section 2(a)(i) of the Act which lays down, inter alia, that the appropriate Government means in relation to an establishment having departments or branches in more than one State, the Central Government. Moreover, from Section 4 of the Visva-Bharati Act, it is clear that the Visva-Bharati University was constituted a body corporate as unitary teaching and residential University. Therefore, if the University as an establishment does not come under the provisions and or the purview of the Act, the different branches or departments of the University which the University is empowered and or entitled to maintain under the provision of the Visva Bharati Act cannot be brought within the mischief of the Act.

16. In the decision of the Madras High Court referred to by Mr. Ginwalla the said Court was explaining the meaning of the word "establishment" which appears in the Act and observed at p.511, in para 12 of the judgment as follows:

I was also aware of the central difficulty stressed by Srinivasan J., evident in all the decisions to which my attention has been drawn. After reference to several authorities and "Words and Phrases Judicially Defined" by Burrows, Vol.2 I find that the most helpful definition of "establishment", at least in the context of the usage of that word in the present Act.19 of 1952, is that available in the Oxford Dictionary, namely "Organised body of men maintained for a purpose." Once we have this definition in perspective, and also keep in mind the principle that the Act really applies to the factory or establishment or industrial organisation, whichever it might be termed, and not to changes in ownership, or to the history of the organisation which might include temporary closures, it seems to me that the true way of looking at the liability becomes fairly clear. On the entire complex of facts of a given case, can we conclude that the legal entity, "the establishment" came totally to an end, and was succeeded by a fresh legal entity? If that be the case, then that fresh entity is the entity to which the Act applies as a first impact and, if that entity is entitled to infancy protection that

protection will have to be granted as matter of course.

17. In the case of Regional Provident Fund Commissioner, Andhra Pradesh v. Osmania University (Andhra Pradesh) (supra) the provisions of the Act were made applicable to a printing press maintained by the University as it was held to be a factory engaged in an industry specified in Schedule I to the Act. Therefore, this case came within the purview of Section 1(3)(a) of the Act. Similar is the case of the Delhi Cloth Milk Co. Ltd. [1961 I L.L.J. 444] (supra) which also took into account the question whether or not three units maintained by a company came within the definition of a factory and as such were also covered by Section 1(3)(a) of the Act.

18. The concerned authorities in para 2 of the letter dated May 13, 1980 from Central Provident Fund Commissioner, New Delhi, addressed to the Secretary, Ministry of Labour, New Delhi, which was communicated to the Registrar of the petitioner by a covering letter dated May 31, 1980 and a copy whereof is Annexure B to the Petition, it has been admitted that the University is not covered by the Act but the Silpa Sadan, the Pearson Memorial Hospital and the Agricultural Farm are covered under the heads of coverage and from the dates as mentioned therein. Further on in Para 3 of the said letter it has been mentioned as follows:

The above establishments under the Visva Bharati University are also not entitled to exemptions u/s 16(2) because the exemption envisaged thereunder is the exemption to the class of establishment on financial grounds and not the exemption/ exclusion in respect of the individual establishment from the operation of employees' Provident Funds & Miscellaneous Provisions Act, 1952.

19. In considering the question of granting exemption u/s 16(2) of the Act the Provident Fund Authorities also went wrong. Section 16(2) reads as follows:

If the Central Government is of opinion that having regard to the financial position of any class of establishment or other circumstances of the case, it is necessary or expedient so to do, it may, by notification in the Official Gazette, and subject to such conditions as may be specified in the notification, exempt that class of establishment from the operation of this Act for such period as may be specified in the notification.

20. Therefore, the financial position of an establishment is not the only criterion which will entitle an establishment to an exemption u/s 16(2) of the Act, other circumstances may also be considered. Therefore, in the instant case, the circumstances under which the Visva-Bharati University was set up and the circumstances under which the aforesaid establishments were being run by the University might have been taken into consideration by the Central Government if it was not misled by the aforesaid letter of the Central Provident Fund Commissioner that only financial conditions entitle an establishment to an exemption under the aforesaid provision of the Act.

21. In view of what has been stated above I must hold that the Visva-Bharati University Agricultural Farm, the Visva-Bharati Silpa Sadan and the Pearson Memorial Hospital are merely departments or branches of the Visva-Bharati University and the Provident Fund authorities are not entitled to assess the said departments or branches as separate establishments under the provisions of the Act. I, therefore, quash the notices of demand which have been impugned in this petition. The amounts which have already been paid, along with interest accrued thereon up-to-date, be refunded to the University, if possible, within a period of eight weeks from date.

22. In view of the order which I have passed no other order is necessary regarding the question of exempting the petitioner u/s 16(2) of the Act.

23. The Rule is, therefore, made absolute to the extent indicated above. There will be no order as to costs.

24. Mr. N.K. Karnail appearing on behalf of the Provident Fund authorities orally prays for a stay of operation of this order. The stay asked for is refused.