

(1964) 09 KAR CK 0010
In the Karnataka High Court
Case No : Writ Petition No. 526 of 1962

Wadi Stone Marketing Company (Private) Ltd.	APPELLANT
Vs	
Regional Provident Fund Commissioner and Another	RESPONDENT

Date of Decision : 15-09-1964

Acts Referred:

Provident Funds and Miscellaneous Provisions Act, 1952 — Section 1 (3) (a), 1 (3) (b), 16, 19 A

Citation : (1965) 2 LLJ 32 : (1964) 2 MysLJ 169

Hon'ble Judges : K.S. Hegde, J; Ahmed Ali Khan, J

Bench : Division Bench

Judgement

Hegde, J.—This petition raises an interesting question of law on which the judicial opinion is sharply divided. Wadi Stone Marketing Company (Private), Ltd., has moved this Court under Art. 226 of the Constitution praying that this Court may be pleased to call for, by the issue of a writ of certiorari or other appropriate writ or direction, as the case may be, the proceedings of respondents 1 and 2 culminating in the order dated 3 April, 1962, marked as Ex. N in the case, and quash the same. It has further prayed for a writ of mandamus or a direction in the nature of mandamus to the respondents requiring them not to take any action against the petitioner-company or its directors or officers in the matter of realization of the alleged contribution due to the provident fund.

2. In the course of his argument Sri S. K. Venkataranga Ayyangar, the learned counsel for the petitioner, pressed for acceptance two contentions, namely

(i) on a true understanding of the facts of the case, it would be seen that the petitioner company is not liable to contribute to the employees' provident fund (to be hereinafter referred to as the fund) under the provisions of the employees' Provident Funds Act, 1952 (Act 19 of 1952) (which will hereinafter be referred to as the Act); and

(ii) under any circumstance, the petitioner is not liable to make any contribution to the fund as the respondents have failed to refer the matter to the decision of

the Central Government, as required by S. 19A of the Act.

3. The petitioner took on lease from the erstwhile State of Hyderabad, as per the registered lease deed dated 1 October, 1952, the right to extract what is popularly known as Shahabad stones or slabs from the lands detailed in the lease deed in question. Shahabad stones or slabs are used for flooring purpose. Shahabad is situate in Gulbarga district of this State which prior to the Reorganization of States was a part of the erstwhile State of Hyderabad.

4. Sub-section (3) of S. 1 of the Act says :

"Subject to the provisions contained in S. 16, it applies -

(a) to every establishment which is a factory engaged in any industry specified in Sch. I and in which twenty or more persons are employed, and

(b) 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 :

Provided that the Central Government may, after giving not less than two months' notice of its intention so to do, by notification in the official Gazette, apply the provisions of this Act to any establishment employing such number of persons less than twenty as may be specified in the notification."

5. There is no dispute that the petitioner's establishment does not come within the ambit of S. 1(3)(a). The only question is whether it is covered by S. 1(3)(b). According to the petitioner, it is not so covered. But according to the respondents, it is so covered.

6. On 17 August, 1957, the Ministry of Labour and Employment (Government of India) by its notification No. SRO 2705 notified that the provisions of the Act shall be applicable to the following four classes of mines, viz.,

(1) iron-ore mines,

(2) limestone mines,

(3) manganese mines, and

(4) gold mines,

with effect from 30 November 1957. The question is whether in view of this notification which was made under S. 1(3)(b) of the Act the provisions of the Act must be held to be applicable to the petitioner's establishment.

7. On 12 December 1958, respondent I called for certain information from the petitioner company to ascertain whether the Act is applicable to the petitioner's establishment. The said document is marked as Ex. A in the case. It is the usual circular letter issued to all establishments which the department thinks are liable to contribute to the fund. On September 16, 1959, respondent 2 issued a show-

cause notice to the petitioner requiring it to show cause,

"... why your limestone mine should not be brought under the purview of the Employees' Provident Funds Act, 1952, and the scheme framed thereunder."

8. In reply to that notice, the petitioner informed respondent 2 as per his communication dated 19 September 1959 :

"All the limestone quarries are open cast quarries, unbounded by any fencing. Just after the removal of a little soil the limestone layer is reached. These layers are opened and extracted. The limestones are found in natural layers with natural cuts with a natural thickness. These layers are simply cut, and without alteration or ornamentation or doing anything which falls under the definition of "manufacturing process" are sold out to the customers. We assure you that there is not the slightest trace of "manufacturing process" in the quarrying operations."

9. In this communication the petitioner did not deny that it was quarrying a limestone mine. In other words, there was no dispute that what was quarried from the mines in question was limestone. But its only contention was that the process adopted by it is not "manufacturing process."

10. Next we come to the notice issued by respondent 2 dated 9 November, 1960. Therein he wrote :

"I write to inform you that the provisions of the Employees' Provident Funds Act, 1952, and scheme framed thereunder applicable to your limestone quarries with effect from 31 November 1957. You are requested to furnish the required information on the pro forma enclosed herewith by return of post so as to enable this office to allot the code number."

11. This was followed by another communication dated 1 December 1960. It is not necessary to set out the contents of that communication. A reminder was sent to the petitioner on 6 December 1960. On December 20, 1960 the petitioner replied to the communications dated 9 November 1960, 1 and 6 December, 1960. That letter is important and it reads as follows :

"No. 2180/60/61 20 December, 1960

To

The Regional Provident Fund Commissioner, Bangalore.

[Subject. - Supply of forms 2, 5, 6, 9, 10, 12 and challans.]

Dear Sir,

We had written to you regarding the supply of forms mentioned above under subject.

Please supply the same in the number mentioned below and oblige :-

FORMS Form 2 100 " 5 100 " 6 100 " 9

100 " 10 100 " 12 100 Challans 100 The Employees" Provident Fund Scheme has been made applicable to us with the retrospective effect from 1 December 1957. In view of this fact we shall be required to submit the returns for about 37 months and that too in large numbers. It involves a lot of clerical job also. Please allow us sufficient time (three months" time) to submit the approximate previous forms as we are new to this scheme.

We have been very recently communicated regarding the decision of the applicability of the Act to the limestone quarries, with the retrospective effect in the month of November, 1960. So permit us sufficient time for submitting the returns from 1 December 1957 to 30 November 1960. We also report that we have not deducted the employees" contribution for the above-mentioned period. We are prepared to give the employer"s contribution for that period. Hence it is our sincere request to you to exempt us from the payment of the employees" contribution for the period from 1 December 1957 to 30 November 1960.

The contribution of employees as well as employer of the current month shall be submitted in the next month within the prescribed period on receipt of required forms from you.

Please allow us to submit the contribution for the previous period in installments.

Please treat this letter urgent and reply immediately to do the needful. Hope you will consider it favourably.

Thanking you,

Yours faithfully,

For the Wadi Stone Marketing Company (Private), Ltd.

(Sd.) -----, Director.

Copy to the Provident Fund Inspector, Gole Market, Raichur."

12. From this letter again it is clear that the petitioner did not contend till the date of that letter that its establishment is not a limestone mine. Thereafter respondent 2 wrote to him the letter dated April 22/24, 1961 intimating the petitioner that it had failed to submit the return in forms 2, 5, 10 and 12 for the period from December, 1957 to March, 1961 in respect of the above establishment. On 5 June 1961, the petitioner sent the following communication to respondent 1 :-

"No. 6214/60-61 5 June, 1961

To

The Regional Provident Fund Commissioner,

20. Cubbon Road, Bangalore.

[Subject. - Compliance with the Employees' Provident Fund Scheme with effect from September 1, 1959 (the date when notification was issued to us for the first time). Reference - Your letter No. MY/PF/557/61, dated February 2/4, 1961.]

Dear Sir,

We are herewith submitting the form 9 and the returns from September 1959 to December 1959 (four months) in duplicate.

Since it has not been made applicable to the same limestone industry in the State of Andhra Pradesh due to other reasons which we have already placed before you, we believe that it is not also applicable to us.

However, we are submitting these returns under protest, to avoid the possible troubles of non-compliance.

For the time being we are remitting herewith the forms 9, 12, 10 and 5. We have written to you to send us nomination form 2 in large numbers as to enable us to submit the same in duplicate. On receipt of these forms we shall be duly sending the same to you.

We have covered the names of those employees who complete the condition of 240 days. Most of the employees are fleeting temporary and migratory and they do not satisfy this essential condition.

Regarding Your show-cause notice No. PF/RCR/526/61 dated 24 April 1961, it is to inform you that Sri Gustasp Rustomji Irani has gone to Bombay to attend the "religious ceremony" of his mother who expired a fortnight ago. By the by kindly note that Sri Mahboob Ali too is in Bombay on account of some urgent work.

As such, we request you to kindly allow us at least fifteen days' time as to enable us to submit the detailed reply.

Thanking you,

Yours faithfully,

For the Wadi Stone Marketing Company (Private), Ltd.

(Sd.) ----, Manager."

13. It is for the first time on 28 July 1961 the petitioner raised the contention that its establishment is not a limestone quarry (see Ex. K. 1). It may be noted that the petitioner had already contributed a sum of Rs. 1,700 towards the fund.

14. We shall now take up the contention advanced by Sri Ayyangar. We think it will be convenient first to take up the contention whether whenever there is a dispute, whether an establishment is liable to contribute to the fund, it is obligatory on the part of the authorities enforcing the provisions of the Act to refer the same to the Central Government for its decision under S. 19A of the Act. It may be noted that this contention had not been taken up in the affidavit

filed by the petitioner in support of the writ petition. It is taken up for the first time at the hearing of the case. But as the question raised is purely a question of law, we permitted Sri Ayyangar to urge the same.

15. Section 19A provides for "removal of difficulties." The marginal note to that section reads "Power to remove difficulties." According to that note, the said section only deals with ways and means of removing difficulties that may arise while giving effect to the provisions of the Act. In other words, it merely provides a machinery for removal of difficulties in giving effect to the provisions of the Act. That is in fact what the section says. It reads :

"If any difficulty arise in giving effect to the provisions of this Act, and in particular if any doubt arises as to -

(i) whether an establishment which is a factory, is engaged in any industry specified in Sch. I;

(ii) whether any particular establishment is an establishment falling within the class of establishments to which this Act applies by virtue of a notification under Cl.(b) of sub-section (3) of S. 1; or

(iii) the number of persons employed in the establishment; or

(iv) the number of years which have elapsed from the date on which an establishment has been set up; or

(v) whether the total quantum of benefits to which an employees is entitled has been reduced by the employer,

the Central Government may, by order, make such provision or give such direction, not inconsistent with the provisions of this Act, as appear to it to be necessary or expedient for the removal of the doubt or difficulty; and order of the Central Government, in such cases, shall be final."

16. It must be borne in mind that the power given under S. 19A is a power to be exercised for the purpose of removing difficulties in giving effect to the provisions of the Act. The person or persons who can give effect to the provisions of the Act are those who are charged with the duty of enforcing the provisions of the Act. The section does not say that recourse could be had to the provisions therein by persons who are affected by the provisions of the Act. In other words, the machinery provided under S. 19A is one for the benefit of those who have to "give effect to the provisions of the Act." Therefore, when the section speaks, "if any doubt arises," it refers to the doubts of those who are "giving effect to the provisions of the Act." In our judgment, this provision does not require the Central Government to decide any dispute that may arise between the authorities enforcing the provisions of the Act and the persons against whom those provisions are enforced. The conclusion is made further clear by the fact that as per the terms of that section the Central Government is not bound to give any direction. The section merely says :

"the Central Government may, by order make such provision or give such direction not inconsistent with the provisions of this Act."

17. It is true that sometimes the word "may" is interpreted as meaning "shall." That construction would have commended itself to us in the instant case, had we come to the conclusion that the provisions contained in S. 19A were enacted for the benefit of those against whom the provisions of the Act are sought to be enforced. Further it may be noticed that the section does not provide for any enquiry by the Central Government. The parties affected are not required to be heard, nor any decision rendered. On a plain reading of that section it is clear that the order or the direction contemplated thereunder is only an administrative or a ministerial order and not a judicial or quasi-judicial order. The Central Government is not required by the terms of the section to act judicially. Before closing this aspect of the case, it is necessary to mention that in the Act there is no provision barring civil suits. If any party is aggrieved by the stand taken by the authorities or by the order or the direction of the Central Government it is open to it to challenge the legality or the correctness of the view taken or the order made in a properly instituted suit. The finality contemplated by S. 19A is, in our opinion, a finality as regards the departmental view. That view is not made binding on the opposite party. The order or direction given by the Central Government does not, and in fact it cannot bind the persons who are not parties before the Central Government. Our view in this regard finds support by the decisions of the Patna High Court, Bombay High Court Allahabad High Court and Madras High Court.

18. In Bankim Chandra Chakravarty and Another Vs. Regional Provident Fund Commissioner and Others, , a Bench of the Patna High Court held that S. 19A envisages a direction by the Central Government when any difficulty arises in giving effect to the provisions of the Act and if any doubt arises as to the matters referred to in that section in the mind of the authority who has to deal with the matter. If that authority does not feel any difficulty or has no doubt about any of the matters referred to in the section, there is no scope for any direction to be given by the Central Government at the instance of a party who may raise a dispute over the matter. The question of any dispute being raised by the party concerned is foreign to the section. A Bench of the Bombay High Court in Nagpur Glass Works Ltd. Vs. Regional Provident Fund Commissioner, Bombay, , held that under S. 19A it is not obligatory upon the Regional Commissioner to refer to dispute as to whether a particular section was engaged in an industry prescribed in S. 1 to the Central Government. Nor does the provision apply to every case where an interpretation put upon any entry in the schedule is disputed, but applies only where the Central Government or the Regional provident Fund Commissioner finds that there is a difficulty in regard to the interpretation to be placed upon the schedule. The omission of the Regional Commissioner to move the Central Government in this regard does not, in any way, affect his powers under the Act, to realize the amount. Similar is true of a dispute arising under Clause (b) of Sub-section (3) of S. 1. This view of the Bombay High Court was

confirmed by another Division Bench of that Court in Nagpur Glass Works Ltd. Vs. Regional Provident Fund Commissioner, . Therein their lordships laid down that the opening words of S. 19A make a distinction between difficulty arising in giving effect to the provisions of the Act and a particular doubt which arise in respect of any of the matters enumerated in Cls. (i) to (iv). So far as the difficulty is concerned it is of a general character. The "difficulty arising in the matter of giving effect to the provisions of the Act" must be a difficulty experienced by the authorities who are charged with the administration of the provisions of the Act and the provident funds. If anybody can make a reference to the Central Government for removing the difficulty arising in the implementation of the Act, it is the Regional Commissioner or the other appropriate authority. It is not open to the factory or the establishment or anyone connected therewith to approach the Central Government calling upon them to make a provision or to pass an order in that regard. The Central Government is not bound to issue any direction. They may make an appropriate provision or issue an appropriate direction or may not. A single judge of the Allahabad High Court in The Delhi Cloth and General Mills Co. Ltd., Delhi Vs. The Regional Provident Fund Commissioner, U.P., , more or less followed the decision of the Patna and Bombay High Courts referred to above, except on one aspect, namely, according to the learned Judge even a party against whom the provisions of the Act are sought to be made applicable can approach the Central Government. An observation to that effect is also found in the decision of the Madras High Court in East India Industries (Madras) (Private), Ltd. v. Regional Provident Fund Commissioner 1964 I Ilj 706. That observation is a mere obiter. We are unable to agree with that view as in our opinion on a true interpretation of S. 19A it is evident that only the authorities implementing the Act could make a reference to the Central Government under S. 19A of the Act. In the aforementioned case, a Division Bench of the Madras High Court has taken the view that if the Provident Fund Commissioner does not find any difficulty in ascertaining whether fifty or more persons are working in an establishment, it is not obligatory on him to refer the matter to the Central Government under S. 19A.

19. Now, we may refer to the decisions cited by Sri Ayyangar in support of the contention that before the provisions of the Act can be made applicable to any establishment it is the bounden duty of the authorities to get a decision of the Central Government under S. 19A. The first case to which he referred is the decision of Rajagopalan, J., in Annamalai Mudaliar and Bros. Vs. Regional Provident Fund Commissioner, Madras and Others, . Therein his lordship laid down that the Employee's Provident Funds Act, 1952, provides for a specific machinery in S. 19A for determination of a dispute as to whether certain factory is a factory within the scope of S. 1(3) of the Act. If that machinery is not resorted to, the High Court would not be justified in constituting itself as a tribunal of first instance to go into the disputed question of the fact and give a decision thereon. With great respect to the learned Judge, we think that there is

no justification for holding that the Central Government when it acts under S. 19A acts as a tribunal, nor does the language of S. 19A permit the conclusion that whenever a dispute arises as to the applicability of the provisions of the Act that dispute has to be referred to the Central Government. It may be seen that S. 19A does not refer to any "dispute" at all. It merely speaks of "removal of difficulties." We may also mention that this decision now stands overruled in view of the Bench decision of the Madras High Court in *East India Industries (Madras) (Private), Ltd. v. Regional Provident Fund Commissioner* 1964 I Ilj 706 (vide supra).

20. Next we go to the decision of another single Judge of the Madras High Court (Jagadisan, J.) in *T.R. Raghava Iyengar and Co. Vs. The Regional Provident Fund Commissioner*, . Therein his lordship laid down that the question whether an establishment is within or outside the Act is not a pure question of law but it is a mixed question of fact and law and cannot be settled without a proper determination of facts forming the cornerstone of the whole statutory edifice. The jurisdiction of the High Court under Art. 226 should not be exercised to investigate disputed questions of fact, such as the number of persons employed in the factory or the nature of the industry carried on therein. There is some machinery provided in the Act satisfactory or unsatisfactory, which can resolved dispute questions of fact between the subject and the State and that is the machinery enacted under S. 19A of the Act. The power to move the Central Government under S. 19A is not confined to the statutory authorities and it is open to the owner of an establishment to move the Central Government under S. 19A to resolve disputes of the nature mentioned above. With respect to the learned Judge, we find it difficult to agree with the above conclusions of his lordship in several respects. We agree with him that when complicated questions of fact arise in a petition, under Art. 226 of the Constitution, it would be inconvenient for the High Court to decide those questions. In our opinion ordinarily such questions should be left to be decided by civil suits. On the other hand, if the case before the High Court rests on undisputed facts or on facts which can be easily ascertained, it would be proper for the High Court to pronounce on the dispute between the parties. We also agree with learned Judge that the question whether an establishment is within or outside the Act is not a pure question of law but is a mixed question of fact and law the same cannot be settled without a proper determination of facts forming the cornerstone of the whole statutory edifice. But we are unable to agree with him when he says that the power to move the Central Government under S. 19A is not confined to the statutory authorities and it is open to the owner of an establishment to move the Central Government under S. 19A to resolve the dispute of the nature mentioned in S. 19A. For the reasons already mentioned above, we hold that the power given under S. 19A is specifically conferred on the authorities enforcing the provisions of the Act and on none else. Further we are unable to accept the view that S. 19A provides a machinery for resolving disputes that may arise while enforcing the provisions of the Act.

21. A single Judge of the Calcutta High Court in Aluminium Corporation of India Ltd. Vs. Regional Provident Fund Commissioner and Others, held that S. 15(2) begins with the words "on the application of any scheme." The scheme can only apply after the doubt or the difficulty has been removed by an order under S. 19A of the Act, and not before, for it is only then that the employees can again be said to "become members of the fund" under S. 15(2) of the Act. Therefore, where the employer was required to transfer the past accumulation to the credit of the employees as on the date from which the Act and the scheme were made applicable to his establishment, such a direction could not be sustained. For the reasons already mentioned above, we are unable to subscribe to the correctness of the above view.

22. It is true, as observed by Jagadisan, J., in T.R. Raghava Iyengar and Co. Vs. The Regional Provident Fund Commissioner, that S. 19A is ill-drafted and imperfect in its terms. It would have been better had the legislature constituted a tribunal as it ordinarily does, in most of the enactments providing for levy of contribution or taxes, to decide disputed questions of fact and law. But the fact that such a tribunal has not been constituted under the Act does not in any manner invalidate the provisions of the Act. As mentioned earlier, the petitioner's right to challenge the correctness of the view taken by the authorities in a civil Court is not barred. In an appropriate case he may also approach the High Court under Art. 226 of the Constitution.

23. Now we come to the question whether the petitioner's establishment is one that falls within the ambit of the Act. In other words, can it be said that the petitioner's establishment is a limestone mine. The petitioner is admittedly quarrying Shahabad stones. Therefore, the question is whether Shahabad stones are limestones. According to the petitioner they are not limestones. We have earlier referred to the correspondence that passed between the petitioner and the respondent. From that correspondence it is clear that till about 1961 the petitioner did not contend that Shahabad stones are not limestones. On the other hand, he proceeded on the basis that Shahabad stones are limestones. His only objection was that he did not adopt "manufacturing process." That objection is clearly an irrelevant objection. But we are unable to agree with the learned counsel for the respondent that the petitioner is now estopped from contending, in view of the communications referred to earlier that Shahabad stone is not limestone. It is a well-settled proposition of law that there can be no estoppel against a statute. Herein we are considering the true scope and effect of the provisions of the Act and the notification issued thereunder. It may be that under a mistaken impression of the law, the petitioner thought that Shahabad stone is limestone. It is open to him to change his view. Further an admission is only a piece of evidence against the person making it, but it is not a conclusive piece of evidence. It is always rebuttable. But till it is rebutted the admission made by a party against his own interest will have to be considered as evidence against him. Therefore, while we are unable to agree with Sri K. Jagannatha Shetty, the learned counsel for the respondent, that the petitioner is estopped from

contending that Shahabad stone is not limestone, we agree with him when he says that the admissions made by the petitioner should be taken into consideration while deciding the question whether Shahabad stone is limestone. In addition to the admissions above noticed, in the lease deed executed by the petitioner in favour of the former State of Hyderabad, it is clearly admitted that Shahabad stone to be quarried from the lands leased is limestone. In Chamber's Twentieth Century Dictionary, limestone is described thus :

"a sedimentary rock of a calcium carbonate, sometimes (magnesia limestone) with much dolomite."

24. Sri Ayyangar admits that one of the important components of Shahabad stone is calcium carbonate. Therefore, prima facie, Shahabad stone is a species of limestone. It is open to the petitioner to challenge the validity of the contribution levied on it in a civil suit. Therein it can challenge the view of the authorities that Shahabad stone is limestone.

25. For the reasons mentioned above this petition fails and the same is dismissed with costs. Advocate's fee Rs. 100.