Ramesh Metal Works and Another Vs State

Court: Allahabad High Court

Date of Decision: Nov. 1, 1961

Acts Referred: Employees Provident Funds and Miscellaneous Provisions Act, 1952 â€" Section 1(3), 14(2)

Citation: AIR 1962 All 227 : (1961) 31 AWR 765 : (1962) 4 FLR 10 : (1962) 1 LLJ 169

Hon'ble Judges: M.C. Desai, C.J; S.N. Dwivedi, J; B. Mukerji, J

Bench: Full Bench

Advocate: Man Singh and J. Swarup, for the Appellant; N.D. Pant and B.N. Katju, for the Respondent

Final Decision: Dismissed

Judgement

Dasai, C.J.
I agree with my brother Dwivedi that the reference should be rejected. The essential fact to notice is that each applicant has

been convicted as an employer under Para 76 of a Scheme framed by the Central Government in exercise of the powers conferred upon, them by

Section 5 of the Employees'' Provident '' Funds Act. It is not in dispute that the acts for which the applicants have been convicted have been done

by them and are in breach of the provisions of the Scheme and are made punishable by Para 76 of it read With Schedule II, Item No. 14, and

Section 14(2) of the Act. I am emphasizing the fact that the applicants have been convicted under the scheme and not under the Act because

whether the Scheme was in force on the date on which the acts were done has not been considered either in the case of Golden Silk Mills Vs.

Central Provident Fund Commissioner and Another, or in the case of State Vs. Jagraj, . When the applicants are not convicted under any

provision of the Act, when the acts done by them do not amount to an offence under the Act, it seems to me irrelevant to consider whether it was,

or was not in force, when the acts were done and the conviction was recorded. The Act may cease to be in force or applicable, but the Scheme

may still remain in force and operation. Had the acts amounted to an offence under the Act, it would have been relevant to consider whether the

Act was in force or applicable to the appellants'' factory when they did the acts, but that is not the case.

2. It is not in dispute that the Act once applied to the applicants'' factory and that they established a provident fund in accordance with the

provisions of the Act and the Scheme. The Central Government was required by Section 5 of the Act to frame a Scheme and the Central

Government had framed a Scheme in compliance. Section 1(3) lays own that the Act will apply to every factory engaged in any industry specified

in Schedule 1 and in which fifty or more persons are employed. The remaining provisions of the Act deal with the Scheme and its contents and

enforcement. One of the matters which must be mentioned in the Scheme, is the establishments or classes of establishments to which the Scheme is

to apply. The main object behind the Scheme is the establishment of a provident fund and evidently the fund is to he established by the

establishments or classes of establishment mentioned in the Scheme. If an establishment is not mentioned in the Scheme, it is not required to

establish a fund.

In the circumstances one cannot with certainty say what is the meaning of the provision in Section 1(3) that the Act will apply to certain

establishments. When all the provisions of the Act are concentrated upon the framing of a Scheme and its implementation and when the

implementation of the Scheme depends upon Us contents, I do not understand how there would arise a question of applying the provisions of the

Act to any establishment. There will arise a question of applying the provisions of the Scheme, but there cannot arise any question of applying the

provisions of the Act. If what is meant by Section 1(3) is that the Scheme should mention only those establishments or classes of establishment

which are mentioned in it, there can arise no question of its continued application because "as soon as the Scheme mentions those establishments,

the provision has exhausted itself. If the object behind the provision was simply to restrict the applicability of the Scheme to certain establishments

and the Scheme contained the provision to the effect that it would apply to those establishments only, there would not arise any occasion for

considering it, except at the time of amendment of the Scheme by the Central Government in exercise of the power conferred by Section 7.

3. Proceeding on the assumption that the combined effect of the provisions of Sections 1(3) and 5 is that the Scheme will apply to an establishment

mentioned in Schedule I and employing, fifty or more persons, and no more, it becomes clear at once that after the Scheme has made itself

applicable to an establishment it will govern the acts of the employer. If the Act continues to apply, its provisions also will govern his acts, but if it

does not continue to apply, the Scheme alone will govern his acts and it will continue to govern them. It can cease to govern them only if there is a

provision to this effect either in it or in the Act. Neither the Act, nor the Scheme, contains any provision for the Scheme ceasing to govern the acts

of the employer or to be in operation. Therefore, once the Scheme has made itself applicable to an establishment, it will continue to be applicable

even if the Act can be said to cease to apply to the establishment. The ceasing of the applicability of the Act to the establishment will not

automatically bring about the ceasing of the applicability of the Scheme because, as I explained earlier, the applicability of the Scheme depends

upon its own contents and not upon the provisions of the Act. I cannot understand what meaning can be given to Section 1(3) other than this that it

simply gives a direction to the Central Government about the establishments to be made, governable by it. The main object of the Scheme is to

establish a fund and once a fund is established in a particular establishment, it must be administered in accordance with the Scheme. Not only the

fund cannot vanish all of a sudden but also it cannot be dealt with in a manner different from that prescribed in the Scheme.

4. Neither the enforcement of the provisions of the Scheme, nor the administration of the und, depends upon the number of the employees and

there is no justification whatsoever for saying that the fund ceases to be administered or the Scheme ceases to be in operation when the number

falls below fifty. The Scheme and the fund are in their very nature meant to be as permanent as the establishment itself; it is impossible to conceive

of the Scheme and the fund to be in operation on one day, to be not in operation on another day, to be in operation on the third day, and so on.

The fund once established cannot come to an end; it is permanent just as the Scheme is a permanent Scheme though subject to addition,

amendment and variation. The Act might go on applying and ceasing to apply to a particular establishment, but the Scheme remains permanent.

The acts that have to be done under the Scheme by an employer are not to be done by him every day; some of them are to be done by him,

periodically. These acts cannot be made to depend upon the daily variations in the number of employees.

5. The words ""employer"" and ''employee'' are defined in the Act and their meanings do not depend upon the number of the persons employed in

the establishment. A person would be an employer and another person would be an employee of an establishment if certain conditions are fulfilled,

regardless of the number of the persons employed in it. The acts that are required to be done under the Scheme and the non-doing of which is

made punishable under paragraph 76 of it are acts to be done by the employer in respect of all of his employees. This means that whether an act is

an offence under paragraph 7.6 or not, does not depend upon the number of persons employed in the establishment.

6. With great respect to the learned Judges of the Punjab High Court, I do not think the Act can be said to be a burdensome Act. It is meant to be

a beneficial Act and if its provisions are not made applicable to an establishment employing less than fifty persons, it may be because the benefit to

be obtained from applying it would not be commensurate with the trouble and the expense involved.

7. I have no doubt that the acts done by the applicants amounted to an offence punishable under Para 76 of the Scheme, notwithstanding the fact

that during the period when they did them, they employed less than fifty persons in the factory.

B. Mukerji, J.

8. I have had the advantage of reading the opinions of my Lord the Chief Justice and brother Dwivedi. I am of the opinion that the Criminal

References should be rejected for the reasons given by my Lord the Chief Justice and Dwivedi, J. Since all that could have been said in regard to

the question that fell for determination, has already been said in the opinions referred to above by me T do not think it necessary to add anything of

my own DWIVEDI, J.

9. These references arise out of fifteen cases. In each case each applicant has been convicted under Para 76 of the Scheme framed under the

Employees'' Provident Funds Act, 1952 (hereinafter called the Act) read with Section 14(2) of the Act and has been sentenced to a fine of Rs.

20/- for their failure to submit monthly returns in Form 12 under Paragraphs 30 and 58 of the Scheme and for their omission to pay administration

charges and their share of contributions to the Fund established under the Act and the Scheme from November 195,6 to January 1958 in respect

of its employees, who became members of the Fund when the Act and the Scheme applied to them in 1955.

10. Sub-section (3) of Section 14 provides that no court, shall take cognizance of any offence under the Act or the Scheme except on a report in

writing by an Inspector appointed u/s 13 of the facts constituting such offence made with, the previous sanction of such authority as may be

specified in that behalf by the appropriate Government. R.K. Rastogi, Provident Fund Inspector, filed a complaint against the applicants after

obtaining previous sanction of the Labour Commissioner, U. P., Kanpur. The complaint and the sanction both contain the facts constituting the

offence. The Labour Commissioner sanctioned the prosecution of Om Prakash'' occupier and manager of Messrs. Ramesh Metal Works (See Ex.

PI).

11. Sub-section (3) of Section 14 does not require previous sanction for the prosecution oil any person. It provides that a report regarding the

commission of any offence under this Act shall be made with the previous sanction of the appropriate authority. Such a previous sanction did exist

in this case before the filing of the complaint against Messrs. Ramesh Metal Works. It could therefore be convicted lawfully.

12. R.K. Rastogi, P. W. 1, has stated that the applicants roll brass scrapes into goolies and re-roll them into sheets, which are then shaped into

Thalis and Katoris by mechanical process. They are thus engaged in manufacturing products of metal rolling and re-rolling. Products of metal

rolling and re-rolling are specified in Schedule I of the Act. The applicants are accordingly engaged in an industry specified in that schedule.

13. We now come to the crucial points in the case. Two facts are not in dispute -- (1) the Act and the scheme applied to M/S. Ramesh Metal

Works in 1955, and"" (2) during the period between November 1956 and January 1959 (hereinafter called the material period) the number of

persons employed by it had gone down below fifty. Did the Act apply to it during the material period?

14. In State v. Hathiwala Textile Mills AIR 1957 Rom. 209 the Bombay High Court has held that once the Act has applied to an establishment, it

would continue to apply to it even if the number of its employees may later go down below fifty. In Golden Silk Mills Vs. Central Provident Fund

Commissioner and Another, the Punjab High court hag given expression to a contrary view. In State Vs. Jagraj, V.D. Bhargava and Takru, JJ.

agreed with, the view of the Punjab High Court.

15. The Act was amended in 1953 and 1956. Section 1, as it originally stood, read:-

Section 1.

(1) This Act may be called the Employees'' Provident Funds Act, 1952.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(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 fifty or more person are employed, but 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 all factories employing such number of persons less than fifty as may be

specified in the notification and engaged in any such industry.

In 1953, sub-section (4) was added to Section 1 in these terms:-

""(4) Notwithstanding anything contained in Sub-section (3) of this section or Sub-section (1) of Sec. 16, where it appears to the Central

Government, whether on an application made to it in this behalf or otherwise, that the employer and the majority of employees in relation to any

factory have agreed that the provisions of this Act should be made applicable to the factory, it may, by notification in the Official Gazette, apply the

provisions of this Act to that factory,"" In 1956 Sub-section (3) of Section 1 was recast.

(3) Subject to the provisions contained in Section 16, it applies-

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

(b) to any other establishment employing fifty 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 fifty as may be specified in the

notification.

16. Learned counsel for the applicants has adopted the line of reasoning in the Golden Silk Mills Golden Silk Mills Vs. Central Provident Fund

Commissioner and Another, and Jagraj"s State Vs. Jagraj, cases. He has also tried to reinforce himself by analogy that it the Act would cease to

apply--and he is in no doubt about it--to an establishment when it switches over from a scheduled industry to a non-scheduled industry, it should

as surely cease to apply to an establishment if the number of its employees later falls down below fifty. Sri Katju seeks to refute this argument by

suggesting that in the caste of a change in industry there is a qualitative change, while in the case of a diminution in the number of employees there is

only numerical change. Sri Katju overlooks the fact that in law a numerical change often entails a qualitative difference, e.g., in the law of

conspiracy, unlawful assembly, companies and partnerships. As for the argument itself the first part of it is assumed by learned counsel to be

irrefragable, but it appears to me not to be free from, controversy. It poses a parallel question at least not less formidable than the question we are

directly called upon to decide, For my part I would not venture to draw my conclusion from a questionable major premise.

17. Turning to the main question, the true meaning of the phrase ""in which fifty or more persons are employed"" should be fixed by examining the

object and scheme of the Act , -

18. The Act, as its title and preamble profess, provides for "the institution of provident funds for employees in factories and "establishment, T" is

thus a piece of social legislation designed to in, sure workmen against old age and infirmity. Sub-section (2) of Section 1 describes its geographical

scope, Sub-sections, (3) and (4) of Section 1 and Section 3 enumerate its subjective scope. In Clause (a) of Sub-section (3) Parliament itself

selects the establishments to which the Act would apply. Clause (b) and the proviso of Sub-section (3), Sub-section (4) and Section 3 are

examples of conditional legislation. According to Clause (b) the Act would also apply to any establishment, not embraced by Clause (a) and

employing fifty or more persons, which the Central Government may, by a Gazette notification, specify in that behalf. Similarly, according to the

proviso the Central Government may by a Gazette notification apply the Act to any establishment employing such number of persons less than fifty

as may be specified in the notification. It does not appear from the language of Clause (b) and the proviso that, it after the issuance of a requisite

notification the number of employees of an establishment to which the Central Government has applied the Act drops down below fifty or the

notified number, the Act would cease to apply.

19. Sub-section (4) of Section 1 enables the Central Government to apply the Act to an establishment if the employer and the majority of

employees have agreed that the Act should be applied to the establishment. Section 3 enables the Central Government to apply the Act to an

establishment if immediately before the application of the Act to another establishment there is in existence a provident fund which is common to

employees in the two establishments. There is little doubt that the Act would permanently apply to the establishments described in those provisions,

20. In short, the Act may, as already shown, apply to five kinds of establishments. Once it has applied to four of them, it would continue to apply

to them permanently. This context puts, to my mind, a sort of legislative gloss on the provisions of Clause (a). It would suggest that an

establishment governed by Clause (a) would also continue to be regulated by the Act even though the number of its employees may subsequently

fall down below fifty. If the argument of learned counsel for the applicants were sound, then of the two establishments in Section 3 the associate

establishment would continue to be subject to the Act but the principal establishment, it it is an establishment under Clause (a), would slip out of the

grip of the Act. It is difficult to conceive that Parliament contemplated a result so startling and so unfair.

21. Section 15(2) of the Act provides that on the application of the Scheme to an establishment, which has already got a provident fund, the

amount in that fund would be diverted to the Fund under the Scheme. On diversion of the amount the provident fund scheme of the establishment

would come to an end."" If the Act would not apply to the establishment when the number of its employees falls down below fifty, its professedly

beneficent provisions would turn out to be a mere lure for tempting the employees to forgo a relatively certain advantage for a fugitive benefit.

Surely that could not have been the object of Parliament.

22. Again, on the interpretation of learned counsel the Act would have to pass through a recurring cycle of non-application and re-application to an

establishment ordinarily employing persons on the fringe of fifty, as vacancies arise and are filled up on the death, discharge, resignation or

retirement of one or more of the employees. It may also have to run through the same cycle in the case of many seasonal industries such as sugar

factories, wherein the number of employees may oversell in the on-season and and may shrink down to below fifty during the off-season. The

suggested, interpretation is thus bound substantially to impair the accomplishment of the professed object of the Act, which is to provide a fairly

substantial amount to the worker in his old age or infirmity.

23. The scheme and object of the Act and the setting of Clause (a) conjointly incline me against the interpretation suggested by learned counsel for

the applicants. I think that the correct construction of the phrase "in which fifty or more persons are employed" in Clause (a) is that it refers to the

point of time of the initial application of the Act to an establishment. If the number of employees in an establishment to which the Act has already

applied falls down subsequently below fifty, the establishment would not cease to be regulated by the "Act.

24. In Golden Silk Mill"s case AIR 195S P&H 386 learned Judges repelled -- and with respect I think rightly -- the argument of the respondent"s

counsel that the phrase ""in which fifty or more persons are employed, refers to the time of the commencement of the Act. I agree that there is an

obvious difficulty in accepting that argument. It does not, however, appear to have been urged before them that the number of employees is

germane only to the initial application of the Act to an establishment, nor were they apparently referred to the object and scheme of the Act. It

appears that they deduced their conclusion from two premises --(1) the number of employees in Clause (a) is a condition upon the fulfillment of

which the Act applies to an establishment, and (2) the underlying purpose of Clause (a) is "not to burden small factories employing less than fifty

persons with liabilities imposed by the Act." With respect, the conclusion drawn by them does not inevitably flow from those broad premises, if the

number of employees is only a condition precedent and not also a condition subsequent, as I think, the ACT will not cease to apply to the

establishment to which it has once applied. The validity of the second premise as an absolute truth seems to be attenuated by the proviso, and it

cannot lend material guidance in the matter of construction of Clause (a).

25. In Jagraj"s case State Vs. Jagraj, , learned Judges held that the phrase "in which fifty or more persons are employed" refers to "the time when

the offence is alleged to have been committed.'' They also did not examine the object and scheme of the Act and interpreted the words ''are

employed'' apparently according to rules of grammar. Law is, however, not an exercise in linguistic discipline. It is emerging as an important

Therapy in disorder of social metabolism. It is a complex process, and can be fully understood only by an. attentive regard to its therapeutic

function and its synthesis. There is accordingly growing recognition by Courts that a statute should be constructed, rather than interpreted, with due

regard to its avowed object and to its character. (see AIR 1944 35 (Privy Council); AIR 1949 135 (Federal Court) State v. A.H. Bhiwandiwalla

(S) AIR 1955 Bom 181 , K.N. Joglekar and Others Vs. Barsi Light Railway Co. Ltd., Mahadeo Dhondu Jadhav Vs. Labour Appellate Tribunal

of India at Bombay, Kanpur Textile Finishing Mills Vs. Regional Provident Fund Commissioner, Harsukh Sarawgi and Another Vs. Mashulal

Khemani and Another . In the words of Judge Learned Hand the art of interpretation is the ''art of proliferating a purpose.

26. The avowed object of the Act is to provide adequate security to the worker in old age and infirmity. It is 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 must have been

intended by Parliament to refer to the point of time of the initial application of the Act to an establishment. The Act accordingly applied to the

applicants during the material period.

27. For the reason discussed above, I would hold that the applicants were rightly convicted. I would accordingly reject the references.