Parthas Textiles Vs Union of India (UOI) and Others

Court: High Court Of Kerala

Date of Decision: Jan. 14, 1991

Acts Referred: Employees Provident Funds and Miscellaneous Provisions Act, 1952 â€" Section 19A, 7A

Citation: (1991) 3 ILR (Ker) 883 : (1999) 3 LLJ 1439

Hon'ble Judges: Varghese Kalliath, J

Bench: Single Bench

Advocate: M.V. Joseph, for the Appellant; K. Prabhakaran, K.I. Mayankutty Mather, V.V. Asokan and Jose Joseph, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Varghese Kalliath, J.
Petitioner is a firm registered under the Indian Partnership Act. It carries business in textiles at Kottayam. The firm

has started business on March 12, 1960. There is no dispute that the petitioner firm is a registered firm.

2. There are other four firms involved in this case. They are M/s. Parthas Textile, Kayamkulam, M/s. Parthas, Trivandrum, M/s. Parthas Textiles,

Nagarcoil and M/s. Parthas Textiles, Alleppey. These are also firms registered under the Partnership Act on July 7, 1975, November 17, 1976,

September 1, 1978 and August 17, 1981 respectively.

3. The question involved in this case is whether the four partnership firm mentioned above are branches of the petitioner or not. This question

assess importance for the purpose of determining the contribution payable u/s 7A of the Employees" Provident Funds and Miscellaneous

Provisions Act, 1952, for short, the Act. Petitioner contended that the four firms at Kayamkulam, Trivandrum, Nagercoil and Alleppey are

independent firms doing independent business even though some of the partners in these firms are partners in the petitioner-firm. Petitioner also

pointed out that in the four firms, apart from some: of the partners in the petitioner-firm, there are other partners also. It was further pointed out that

the four firms were treated as independent firms doing independent business for the purpose of registration of the firms under the Income Tax Act

and other various enactments, and these firms were assessed separately by the income tax Department. They have got permanent account numbers

and separate licences and General Sales Tax and Central Sales Tax registration.

4. The second respondent passed an order, of course, after some enquiry that the four firms are really branches of the petitioner-firm and that

these four firms will also come under the coverage of the employment provident fund scheme of the petitioner''s firm. In arriving at this conclusion,

the second respondent has considered some materials. It is said that all the partners are relations and in fact, all these firms are family concerns and

in order to avoid the incident of tax and the liability, to pay provident fund under the Act, some methods have been adopted and for showing that

the four firms are independent firms, the firms are registered with some of the partners of the petitioner''s firms and others. The second; respondent,

while taking evidence, heard the representations made by the four firms. It was particularly pointed out that in regard to the firm, Parthas,

Nagercoil the Provident Fund Commissioner of Tamil Nadu, accepted that firm as an independent firm doing independent business and made it a

firm which will come under the Provident Fund Schemes, not as a branch of the petitioner''s firm. The second respondent held that the finding of

the Provident Fund Commissioner of Tamil Nadu is not binding on him and that he can make independent enquiry in the matter and it was also

found that the full facts were not disclosed before the Provident Fund Commissioner, Tamil Nadu. Finally, the second respondent passed Ext. P8

order holding that the four firms are only branches of the petitioner''s firm.

5. Aggrieved by the order of the second respondent, petitioner filed an application before the first respondent u/s 19-A of the Act. Before the first

respondent, the four firms also filed separate representations stating that they are not branches of the petitioner and that they cannot be treated for

the purpose of Section 7A of the Act, as branches of the petitioner-firm. A lengthy order has been passed by the first respondent, adverting to the

contentions raised by the petitioner and the answers given by the second respondent. But, the first respondent did not give an opportunity to the

four firms which contended that they are not branches of the petitioner-firm. First respondent passed the impugned order Ext. P-20 considering

certain aspects of the matter.

6. Counsel for petitioner submitted that the most important and vital aspects, which would indicate that the four disputed firms are independent

establishments and they cannot be clubbed together with the petitioner-firm, have not been adverted to or properly understood and appreciated by

the first respondent. In this case, there is no dispute that the four firms, in a way have got a separate and independent character insofar as by virtue

of the registration under the Partnership Act, they can be considered as a separate entity. That vital aspect has not been properly dealt with in the

order passed by the first respondent.

7. I do not want to say, finally what has to be done in this case. There is strong force in the submission made by counsel for petitioner that other

statutory authorities, like, the officers of the Income Tax Department and Sales Tax Department, have considered the four firms as independent

establishments. Even for the purpose of Section 7A-of the Act, one of the firms in Tamil Nadu has been found to be an independent establishment.

At any rate, the Provident Fund authorities in Tamil Nadu had no doubt about it and the matter was not agitated before the Central Government

u/s 19A of the Act. These are all matters, which ought to have been adverted to correctly, applying the correct law in the matter.

8. It has to be noted that the four firms as I said earlier, were parties before the second respondent. They are also vitally interested in the matter. If

they do not want to be treated as branches of the petitioner, if a competent authority under the statute finally declares that they are branches of the

petitioner, naturally it will have serious repercussions. It has got serious consequences, as far as the four firms are concerned. The four firms were

vitally interested in the matter and that has been made clear by their active participation in the enquiry before the second respondent and

particularly before the first respondent by filing petitions. Here also, counsel appeared for the four firms and highlighted their case that they are not

branches of the petitioner.

9. In this context, I shall advert to the nature of the jurisdiction exercised by the authority u/s 19-A of the Act. Of course, the language of Section

19-A postulates that at any rate, the power exercised by the authority is not judicial. But, I cannot say that it is purely executed for several reasons.

A decision of a very important nature is taken by the first authority, that is, the Fund Commissioner. The statute will never leave it without another

authority, at least to oversee the correctness of the decision of the first authority under the statute. So, in the scheme of the enactment, so long as

there is no provision for appeal or revision, Courts are inclined to interpret the import, scope and width of Section 19-A of the Act, applying that

great rule of interpretation purposive interpretation. A proper implementation of an Act is the prime devour of the Legislature and for a proper

implementation of the provisions of an Act, Courts are bound to give a meaningful and purposive interpretation of the provision. Motivated by this

purpose in mind, Courts have considered the scope and width of Section 19-A of the Act.

10. I shall first advert to the decision reported in 1983 KLT 1071 (Mammoo & Bros. v. Govt. of India), wherein the Court has said that though

the power exercised u/s 19-A of the Act is not judicial in character, it is certainly quasi judicial and if certain primary requirements for a proper

decision of the matter have not been complied with, this Court has got the obligation and duty to correct that authority, by exercising its power

under Article 226 of the Constitution. It is clearly stated in the decision (1983 KLT 1071) that if the authority u/s 19-A of the Act has passed an

order, this Court can examine that order and if this Court is satisfied that the order has been made not based on reasonable, legal evidence, if the

order is made without proper application of mind of relevant issues in the case, if irrelevant matters have been considered, if relevant matters have

been ignored to be considered or if provisions of law misapplied and finally if principles of natural justice have been violated, that order is

unsustainable and a valid challenge under Article 226 of the Constitution can be sustained. It is also stated that the order which gives conclusions

which are inconsistent with the only conclusion that is reasonably possible on the basis of the evidence, then also the order is bad and can be

validly challenged under Art.226 of the Constitution.

11. Another approach has been made in 1988 (1) KLT 843 (Patel Veneers (P) Ltd. v. Regional P.F. Commissioner) consistent with what I have

said that Section 19-A of the Act has to be interpreted applying the purposive interpretation rule so as to enable the aggrieved party to oversee the

order passed by the Provident Fund Commissioner u/s 7A of the Act. Even though the power exercised by the authority u/s 19-A of the Act is not

judicial, in 1988 (1) KLT 843 VISWANATHA IYER, J. has made it very clear that there is power for the authority u/s 19-A to pass interlocutory

orders. It is an indication that the power exercised by the authority I is quasijudicial in character.

12. I may also advert to the fact that Section 19-A deals with difficulties that may arise in giving effect to the provisions of the Act and how to deal

with these difficulties in order to iron out the creases that may be created when implementation of the Act is sought, power is given to the authority

u/s 19-A of the Act. Section 19-A does not stop with that power. It further deals with doubts in regard to certain matters enumerated therein,

under Sub-clauses (i) to (v). Sub-clause (iii) of Section 19-A relates to the doubt with regard to the number of persons employed in an

establishment. Certainly, the number of persons employed in an establishment depends upon a very vital question whether that establishment has

got one branch or not, or whether some other establishments said to be independent establishments are really the branches of the establishments in

question. So, Sub-clause (iii) of Section 19-A definitely takes in the question whether in this particular case, the four firms are independent

establishments or branches of the petitioner. So, certainly Section 19-A has got plain and clear application in this case. Counsel for respondents

did not seriously question this aspect of the matter.

13. In Glamour Vs. Regional Provident Fund Commissioner and Others, the Delhi High Court took the view that the controversy regarding the

number of workers in an establishment determinable under para 26-B of the scheme, though for the first instance, a matter to be determined u/s

7A, that determination carries with it an incidental decision, whether the establishment has got branches or not or whether certain establishments

which claim that they are independent establishments can be clubbed together with the establishment in question. The Delhi High Court said :

Consequently it follows that it falls within the ambit of exercise of powers by the Central Government u/s 19-A 3 of the Act.

14. The Madras High Court also had occasion to consider this question in The Poly Clinic, Nagercoil Vs. Regional Commissioner, Employees

Provident Fund, Tamil Nadu and Others,

The Madras High Court said thus:--

The enquiry to be conducted u/s 19-A being fact finding enquiry, it is incumbent upon the Central Government to call for production of oral and

documentary evidence both by the employer as also by the concerned department when disputed questions of fact arise for determination and

thereafter decide as to how many are workmen or not.

15. Since there was controversy as regards" the jurisdiction u/s 19-A and an overseeing of the order u/s 7A is now made possible only by virtue of

the purposive interpretation of Section 19-A by Courts, the, Parliament thought that an appellate provision is necessary as against orders passed

u/s 7A and it is now provided u/s 71 in the Amended Act, Act 33 of 1988. A provision for appeal is provided to a person aggrieved by orders

passed u/s 7A before a Tribunal. Of course, this provision has not been given effect to so far.

16. Though the order passed u/s 19-A of the Act is a very lengthy order, the consideration made by the authority is not at all satisfactory. Certain

crucial facts, which are important for a final conclusion have not been considered, applying the correct law with regard to those facts. Admittedly

the four firms are registered under the Partnership Act. Though a partnership is not considered to be a legal person, it has got almost all the

trappings of a legal person. Further in this case, the fact that the four partnerships have been considered under important statutes as independent

units with independent existence, the authority ought to have been more careful in analysing the facts of the case, so as to record a final finding. It is

also equally important to note that an authority under the Act (Provident Fund Act) has considered the circumstances in regard to one firm, out of

the four firms and found that it is an independent unit. That decision has become final. Whether that decision can be disturbed by an inconsistent

decision of an authority under the Act is also question which requires deeper consideration.

17. Further, the four firms filed petitions before the first respondent, but no notice was issued to the firms and they have not been heard. It has to

be remembered that the power exercised u/s 19-A of the Act by the authority is a power, which is intimately linked with an enquiry of facts and in

that connection, I feel it is incumbent on the part of the authority to hear the four firms which claim that they are independent firms and not branches

of the petitioner. It is clear that the authority ought to have given an opportunity to the four firms also to be heard in the matter. In this respect,

though I am not pronouncing a final opinion as regards the merits of the case, I have to set aside the order Ext. P20, and remit the case to the

authority u/s 19-A of the Act, for a fresh disposal, after giving a meaningful opportunity to the petitioner and the four firms in question to present

their case. I do so.

18. Counsel for petitioner submits that there was an order of stay passed by this Court in C. W.P. No. 13660 of 1987 after the order Ext. P20. I

feel it is only fair and proper to order stay of recovery of money due as per Ext.P8 order till the disposal of the application filed by the petitioner

u/s 19-A of the Act.

O.P. is disposed of as above.