(1990) 04 MAD CK 0066

Madras High Court

Case No: W.A. No''s. 529, 530, 531, 532 and 533 of 1980

The Regional Commissioner, Employees Provident Funds, Tamil Nadu and Pondicherry States, Royapettah High Road, Madras-14 — APPELLANT

Vs

M/s. Kamaraj Textiles and others — RESPONDENT

Date of Decision: April 18, 1990

Acts Referred:

- Employees Provident Funds and Miscellaneous Provisions Act, 1952 - Section 1, 1(3), 14(1A), 14A(1), 15(2)

Hon'ble Judges: Mohan, O.C.J.; Venkataswamy, J; S. Ramalingam, J

Bench: Full Bench

Advocate: Radha Srinivasan, for the Appellant; S. Venkataraman for M/s. M.N. Krishnamani and C.M. Krishnakumar, for the Respondent

Judgement

Nainar Sundaram, J.

These five Writ Appeals are directed against the common order of Varadarajan, J. as he then was, in the concerned Writ Petitions. The appellant in these Writ Appeals was the respondent in the Writ Petitions and the respondents herein were the respective petitioner in the Writ Petitions. It will be convenient to refer to the parties as they stood arrayed in the writ Petitions. The respondent initiated proceedings on the basis that the petitioners will be covered by the Employees Provident Funds and Miscellaneous Provisions Act, 1952, hereinafter referred to as the Act, and the Scheme framed thereunder. The petitioners would not accept that they are covered by the Act and the scheme and they would state that they have filed applications under S. 19-A of the Act before the Central Government and they are pending. Yet, the respondent wanted to proceed with the enquiry under S. 7-A of the Act. But, the petitioners would object to the prosecution of the proceedings under S. 7-A of the

Act on the ground that the respondent lacked jurisdiction to proceed with such enquiry, pending adjudication under S. 19-A of the Act. They were consistent in this stand and they had been asking for postponement of the proceedings and they did not participate in the enquiry before the respondent. The respondent passed the impugned orders ex parte, making the determination under S. 7-A of the Act and the petitioners were called upon to remit the amounts towards contribution and administrative charges. These orders were put in issue in the Writ Petitions. Varadarajan, J. as he then was, falling in line with the catena of decisions of this Court, which have countenanced that pending consideration of the proceedings started under S. 19-A of the Act before the Central Government, proceedings under S. 7-A should not be prosecuted and that it will be lacking in jurisdiction, chose to quash the orders of the respondent. However, the learned Judge directed that it ifs open to the respondent to take fresh proceedings under S. 7-A of the Act, after the disposal of the proceedings started by the petitioners under S. 19-A of the Act, in the light of any decision which may be given by the Central Government in those proceedings. Mr. T. Somasundaram, Additional Central Government Standing Counsel, appearing for the respondent-appellant in these Writ Appeals, would submit that the pronouncements relied on by Varadarajan, J., as he then was, were all by the learned single Judges of this Court and there is a specific pronouncement of a Bench of this Court consisting of Paul and Swamikkannu, JJ., in Premier Studs and Chapplets Co. and others v. State 1980 L.W. (Crl.) 226=(1930) 56 F.J.R. 611, where, after analysing the case law on the subject, the question referred to the Bench as to whether the provisions under S. 7-A of the Act could be enforced, pending decision of a reference under S.19-A of the Act, has been answered in the affirmative. Drawing support from this decision of the Bench, the learned counsel for the respondent wants us to interfere in Writ Appeal and set aside the common order of the learned single Judge, who disposed of the Writ Petitions.

2. Being a co-ordinate Bench, normally we need not take a view contrary to the decision given by the earlier Bench. But, our assessment of the legal position in the light of the pronouncements of Courts, including this Court and the highest Court in the land, obliges us to differ from the view of the earlier Bench and hence, with due regard to judicial decorum, we feel constrained to refer the question to a larger Bench. We are expressing below our reasons for this decision of ours.

3. In Annamalai Mudaliar and Bros. Vs. Regional Provident Fund Commissioner, Madras and Others, Rajagopalan, J. dealt with a case where the question put in issue was as to whether the petitioner employed fifty persons or more in the factory within the meaning of S. 1(3) of the Act. The learned Judge took note of the fact that neither the Act nor the Scheme vested any power in the Regional Provident Fund Commissioner to adjudicate the dispute whether a factory is one to which the Act Applies, that is, whether it is a factory within the scope of S. 1(3) of the Act. The learned Judge found that no order of the Central Government appeared to have been sought in that case either be the Regional Provident Fund Commissioner or by

the petitioner-firm and yet on the ground that there is a dispute and that dispute had yet to be decided under S. 19A of the Act deemed fit to issue a Writ of Prohibition against the Regional Provident Fund Commissioner not to enforce the demands for contributions against the petitioner-firm till the dispute is decided under S. 19A of the Act. In Aluminium Corporation of India Ltd. v. Regional Provident Fund Commissioner (1958) 15 F.J.R. 219, P.B. Mukharji, J. at, at page 229 observed as follows:

The language of S. 19A of the Act is such that it does not lend itself easily to retrospective application. It gives power to the Central Government to remove difficulty or doubt. Until the doubt or difficulty is removed, there is little scope for putting such order in retrospective operation. The language of S. 15(2) is quite clear also. It begins with the words on the application of any scheme. Now, the scheme can only apply after the doubt or the difficulty has been removed by an order S. 19A. of the Act, and not before. It is only then that the scheme applies and not otherwise. It is only then that the employees can again be said to ''become members of the fund'' under S. 15(2) of the Act.

In T. Raghava Iyengar and Co. v. Regional Provident Fund Commissioner, Madras (1963) 23 F.J.R. 28, Jagadisan. J., dealt with the question as to whether the Regional Provident Fund Commissioner had jurisdiction to enforce the Act and the Scheme framed thereunder, pending the decision of the Central Government under S. 19A of the Act. In that case, there was, in fact, a petition under S. 19A, relating to the applicability of the Act to the concerned establishment pending before the Central Government. The learned Judge adverted to the scope and significance of the enquiry on the question as to whether an establishment is within or outside the Act in the following terms :

The question whether an establishment is within or outside the Act is a mixed question of fact and law. It is certainly not a pure question of law. Now, there can be no factory under the Act unless a manufacturing process is carried on in the premises. Whether a manufacturing process is carried on or not would depend upon the activities in the premises. The work done in the premises is purely a question of fact. But, whether it constitutes a ''manufacture'' within the meaning of the Act would be a question of law. The number of persons employed is a question of fact. Whether the persons engaged in work in the factory are employees for wages, whether their relationship with the employer is that of a servant and a master or whether they are independent contractors is very largely a question of fact. It is quite obvious that the applicability of the Act to a particular establishment turns upon the state of certain basic facts. A dispute whether an establishment is governed by the Act or not cannot be settled without a proper determination of facts forming the corner stone of the whole statutory edifice.

The Act is ill drafted and imperfect, in its terms and causes disappointment by the absence of a machinery for settling controversial and disputed questions of fact. The

power of the Central Government under S. 19A to pronounce its opinion for removal of doubts or defects cannot be said to be quite adequate, effective or satisfactory, to obviate the necessity of any special Tribunal or to dispense with such a Tribunal altogether. The nature of the function discharged under that section by the Central Government, and the circumstances under which jurisdiction can be invoked are not made quite explicit by the language of the statute but are beset with more than an ordinary degree of complexity, as illustrated by judicial decisions, exhibiting conflicting trends or views. It seems to me that S. 19A affords slender assistance to the proprietor of an establishment who pleads for the non-applicability of the Act, with the almost bona fides and on good grounds. The officer of the Central Government at New Delhi dealing with the question whether an establishment at Pallathur in Ramanathapuram District is within the ambit of the Act or not necessarily depends upon the facts contained in the files forwarded by the Regional Provident Fund Commissioner and the averments in the application of the factory owner, which, being interested do not secure full weight. There is no provision in the Act for the Central Government to hold an enquiry in the matter. The employer has no means of letting in evidence to substantiate his pleas. Even the most careful decision of the Central Government may not be calculated to do real and substantial justice to the subject claiming immunity from the Act. The result is that the Act is applied, merely on the notions of the Commissioner or the Central Government, without due regard to the rights of persons complaining that the Act is wrongly applied to them. It is manifestly improper that the subject should be saddled with pecuniary obligations on the edict, or ipse dixit of the levying authority without giving him a chance to be heard and to substantiate his contentions in the matter. The present position is that obligations under the Act might be thrust on any establishment quite illegitimately leading the employer to protest if he can and if he has no misgivings of the futility.

The crucial question in whether in case of this description involving a dispute regarding basic facts which must be present to attract the applicability of the Act, the Commissioner should be permitted to enforce the Act and the scheme, because in his view such facts are present, pending the decision of the Central Government, which is the competent authority to decide the dispute and which is already seized of the matter at the instance of the petitioners.

The learned Judge referred to the pronouncement of Rajagopalan, J. in Annamalai Mudaliar and Brothers v. Regional Provident Fund Commissioner, Madras AIR 1955 Mad 387, and to the decision of the Calcutta High Court in Aluminium Corporation of India Limited v. Regional Provident Fund Commissioner (1958) 15 F.J.R. 219, and chose to follow the same. The learned Judge did not agree with the view of the High Court of Bombay in The Nagpur Glass Works Ltd. Vs. The Regional Provident Fund Commissioner and Others, and of Veeraswami, J., in W.P. No. 619 of 1959, when those pronouncements seemed to have countenanced the theory that the difficulty experienced must be only that of the authorities charged with the administration of

the provisions of the Act, and it is not open to the employer to approach the Central Government for a resolution of the controversy. The learned Judge on the present question summed up the position in the following terms :

As it is there is some machinery provided under the Act, satisfactory or unsatisfactory, which can resolve disputed questions of fact between the subject and the State, and that is the machinery enacted under S. 19A of the Act. Till the dispute is decided by that appropriate authority, it cannot be said that the Act be legitimately put into operation despite the protests of the petitioners. With respect, I agree with the decision of Rajagopalan, J. in Annamalai Mudaliar and Brothers v. Regional Provident Fund Commissioner, Madras 1955 (8) F.J.R. III and, in my opinion, mere demand by the Commissioner compelling the petitioners to pay the contributions cannot be a decision by a competent authority on the dispute raised by the petitioners. I am satisfied that a mandamus should be issued forbearing the respondent from enforcing the demands under the Act and the scheme till the application of the petitioners under S. 19A of the Act before the Central Government is disposed of and decided one way or the other.

In Union of India (UOI) and Another Vs. Ogale Glass Works, the Supreme Court, after making a review of the sections, observed as follows :

From a review of the Sections, it will be seen that the Act is essentially a measure for the welfare of the employees, and if the Act applies and scheme has been framed for an establishment, the employer is bound to make the contributions as provided for under S. 6. There is a statutory liability on an employer to pay the contribution at the rate mentioned in S. 6. Stringent provisions have been made for non-compliance with the requirement of the statute and very drastic powers have been given to the authorities to recover the contribution due from an employer. Though there is a hierarchy of officials, nevertheless, it is only the Central Government that has been given power under S. 19A to give a direction not inconsistent with the provisions of the Act if any doubt arises regarding one or other matters referred to in Cls. (i) to (v) and that power is to be exercised when any difficulty or doubt arises in giving effect to the provisions of the Act.

In Raghuram Textiles, rep. by its Manager v. The Regional Provident Fund Commissioner, Madras-14 (1979) 92 L.W. 376, one of us, Natarajan, J. who had occasion to consider the same question, after referring to the case law on the subject, held that the competent authority under the Act to decide the dispute as to the applicability of the Act is the Central Government and before the Central Government has given its decision on the reference made to it, an enquiry under S. 7A of the Act cannot be proceeded with. In Valluvar Handloom Textiles, Vadaseri and others v. The Government of India (1980) II M.L.J. 468, Mohan, J. deprecated the move of the Central Government making an order of remittal for an enquiry under S. 7A of the Act and held that it is entirely for the Central Government to decide as to the applicability of the Act in a particular case or whether it is an establishment

falling within the definition of ''establishment' under the Act.

3. There are other pronouncements of this Court, all of single Judges, which have fallen in line with the thinking that until the dispute or difficulties on the question of giving effect to the provisions of the Act are removed by the Central Government under S. 19A of the Act, when an application under that provision has been already resorted to and pending and for which (sic) has been exclusively given to the Central Government it would not be in order to prosecute the other processes under the Act. I had occasion to refer to this principle in M/s. N.K.S. Transports and another v. The Regional Provident Fund Commissioner 1985 Writ L.R. 647 and since the petitioners therein underlook resort to the process under S. 19A of the Act within a time to be specified, direction were issued to the Regional Provident Fund Commissioner to await the decision of the Central Government, if such process is resorted to within the time specified and if such process is not resorted to within the time specified the Regional Provident Fund Commissioner was given the liberty to proceed with the matter as if no controversy existed. We will presently come to the pronouncement of the earlier Bench of this Court in Premier Studs and Chapplets Co. and others v. State (1980) 56 F.J.R. 611, which is being heavily relied on by the learned counsel for the respondent. In Messrs. Chokkan Palani Vilas and others v. The Regional Provident Fund Commissioner, Madras and another 85 L.W. 451. Palaniswami, J., took the view that in an enquiry under S. 7A of the Act, it would be necessary to decide the question of applicability of the Act also and in case where the controversy is raised by the employer to the effect that his establishment does not come within the scope of the Act and the scheme, he need not necessarily be directed to approach the Central Government under S. 19A and the Legislature has conferred power upon the authorities under S. 7A of the Act to determine the amount and it is equally competent for them to decide the question of liability by giving an opportunity to the employer. But, later the very same learned Judge in Moneys Textiles, rep. by partner Subramania v. Regional Commissioner Employees Provident Funds, Tamil Nadu and Pondicherry, Madras W.P. No. 803 of 1978, following the pronouncements in Annamalai Mudaliar and Brothers v. Regional Provident Fund Commissioner, Madras AIR 1955 Mad. 387, and K.R. Subbaiar v. Regional Provident Fund Commissioner, Madras (1963) 23 F.J.R. 20, expressed the view that whenever a dispute is raised about the liability of an employer to make contributions under the Act, the machinery provided under the Act has to be invoked and therefore, the employer should move the Central Government under S. 19A for determination of the dispute and, once a petition under S. 19A is filed, further action under S. 7A should be deferred. In Mahaveer Metal Manufacturing Co. v. Regional Provident Fund Commissioner, Jaipur and others 1970 Lab I.C. 251, the Division Bench of the High Court of Rajasthan consisting of Bhandari, C.J., and Tyagi, J. expressed the view that the implementation of the scheme under the Act could be done only on the date when the Central Government renders its decision under S. 19A of the Act. While doing so, the Bench followed the pronouncement in

Aluminium Corporation of India Ltd. Vs. Regional Provident Fund Commissioner and Others, and T.R. Raghava Iyengar and Co. v. Regional Provident Fund Commissioner, Madras. AIR 1963 Mad. 238=1963-I-Lab. L.J. 32.

4. There is another line of thinking, which has has found expression in the pronouncements of other High Courts. In Provident Fund Inspector, Ernakulam v. Auto Transport Union (Private) Ltd. and others 1964-I-LLJ. 562, a Bench of the High Court of Kerala consisting of Smt. Anna Chandy and Sri. P. Govinda Menon, JJ., held that in a prosecution under the Act, even though the employer had put forth the defence that theirs was not a factory and it would not be covered by the Act, the Magistrate was not bound to wait till the questions were decided by the Central Government under S. 19A of the Act and the Criminal Court has got no right to ask one of the parties to approach the Central Government for a direction in the matter and adjourn the case till that order is obtained.

5. In Jintan Clinical Thermometer Co. (India) Private Ltd. v. Union of India and another (1974) 46 F.J.R. 371, a Full Bench of the High Court of Gujarat considered the effect of the Central Government resolving a dispute under S.19A of the Act and opined that it cannot be held that the Act and the Scheme remained suspended during the period when S.19A machinery was invoked.

6. In Raj Narain Aggarwal Vs. The Regional Provident Fund Commissioner and Another, , Rangarajan, J. of the High Court of Delhi opined that S. 7A contemplates the primary enquiry and that is mandatory and that it can be got over by resorting to S.19A and that the matters to be decided by the Central Government under S. 19A may be decided after necessary facts are gathered and after an inquiry postulated by S. 7A is made, if the facts are in dispute and hence order passed by the Central Government under S.19A without primary enquiry under S. 7A is not valid.

7. In Kunhipaly v. Regional Provident Fund Commissioner, Trivandrum and others 1966-1-L.L.J. 642, P. Govindan Nair, J., as he then was, held that the Act comes into operation by its own vigour and it applies if the conditions stated in the Act are satisfied and he repelled the condition that the operation of the statute depended on any decision taken by the authorities under the statute.

8. In M/s. East India Industries (Madras) Private Ltd. v. The Regional Provident Fund Commissioner Madras 77 L.W. 198=1964-I-M.L.J. 441, a Bench of this Court consisting of S. Ramachandra Iyer, C.J. and P. Ramakrishnan J. held that the processes under S.19A of the Act need not necessarily be resorted to by the Provident Fund Commissioner and it could also be resorted to by the employer and it observed as follows:-

S.19A, in our view, gives right to the parties concerned to refer in case of difficulty for the opinion of the Central Government. For example, the appellant could have applied to the Central Government for a finding as to the total number of workers in his factory during the relevant period. The provident fund commissioner too could

have applied for it. But where the Provident Fund Commissioner did not find any difficulty in the matter of ascertainment of numbers, it cannot be said that it was obligatory upon him to refer the matter to the Central Government.

S.19A of the Act is generally couched. It does not speak as to how and at whose instance the resolution of the dispute should come before the Central Government. The language of S.19A runs as follows:

19A. If any difficulty arises 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 Schedule 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-S.(3) of S. 1 ;

(iii) The number of persons employed in an 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 employee 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 the order of the Central Government, in such cases shall be final.

It only says that ''if any difficulty arises in giving effect to the provisions of this Act, and in particular, "if any doubt arises as to ...the Central Government may, by order, make such provision or give such direction..." If the authority under S. 7A does not experience any difficulty coming within the ambit of S. 19A, he may certainly proceed with the process of determination of moneys due from the employer under S. 7A. But, if the employer raises the controversy within the meaning of S.19A of the Act, he may resort to the process under that provision. The observations of the Bench of this Court in M/s. East India Industries (Madras) Private Ltd. v. The Regional Provident Fund Commissioner, Madras 77 L.W. 198=1964 I-M.L.J. 441, make it clear that if the Provident Fund Commissioner does not find any difficulty in the matter of ascertainment, it is not obligatory on his part to approach the Central Government under S.19A. In such a case where the employer raises a dispute within the meaning of S.19A of the Act, it is open to him to resort to the process under that provision. But when once the matter comes up before the Central Government under S.19A, by whatever manner, be it so, the question is, can the determination under S. 7A be prosecuted and done, despite the pendency of the matter, before the Central Government. It is true the applicability of the Act depends upon its own vigour and provisions. No one need dispute the same. But, its applicability to a particular

establishment will depend upon the factual satisfaction of the conditions set out therein. S. 1(3) speaks about applicability in the following terms:

1(3) Subject to the provisions contained in. S. 16, it applies

(a) To every establishment which is a factory engaged in any industry specified in Schedule 1 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 to do so, 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.

S. 16 excludes certain establishments from the purview of the Act, and its language runs thus:

16(1) This Act shall not apply

(a) To any establishment registered under the Co-operative Societies Act, 1912, or under any other law for the time being in force in any State relating to co-operative societies, employing less than fifty persons and working without the aid of power ; or

(b) To any other establishment employing fifty or more persons or twenty or more, but less than fifty persons until the expiry of three years in the case of the former and five years in the case of the latter, from the date on which the establishment is, or has been, set up.

Explanation: For the removal of doubts, it is hereby declared that an establishment shall not be deemed to be newly set up merely by reasons of a change in its locate on.

(2) If the Central Government is of opinion that having regard to the financial position of any class of establishments 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 establishments from the operation of this Act for such period as may be specified in the notification.

How far the conditions for applicability stand satisfied so as to apply the Act to an establishment and cast a burden on the employer is a matter of factual adjudication in the light of the legal provisions. Such a power of adjudication has not been specifically conferred upon the authority making the determination of the amounts due from an employer under S. 7A. The determination of money due by the

employer under S. 7A of the Act presupposes the applicability of the Act to the establishment. In contrast the specific machinery for such adjudication is found in S. 19A.S.19A was not initially there in the Act. It was introduced by the Employees'' Provident Funds (Amendment) Act 37 of 1953. The Statement of Objects and Reasons for the amendment runs as follows :

STATEMENT OF OBJECTS AND REASONS :

The working of the Employees'' Provident Funds Act has brought out certain defects.

The principal defect relates to the application of the Act and the Scheme. There are considerable doubts regarding the expressions used in Schedule I. No authority has been prescribed for removing doubts and difficulties. There is no power for applying the Scheme to a factory not covered by the Act even when the employer and the employees ask for such application. At present the employees of exempted factories are not entitled to the benefits of nomination, protection against attachment or prior claim on the assets of an insolvent employer. It is not possible to grant exemption to any factory from the operation of the Scheme on economic grounds.

There are also certain administrative difficulties to be set right. There is no provision for inspection of exempted factories; nor is there any provision for the recovery of dues from such factories. An employer can delay payment of provident fund dues without any additional financial liability. No punishment has been laid down for contraventions of some of the provisions of the Act.

This Bill seeks primarily to remedy these defects.

One of the reasons for the amendment is to prescribe an authority for removing doubts and difficulties. The authority conferred with the power to remove doubts and difficulties is the Central Government. It is a well settled principle that when certain powers are conferred on specific authorities by the statute, they have to be exercised by them alone in strict accordance with the scope of conferment. Here we find a specific power given to the Central Government to adjudicate the questions set out in S.19A. The very applicability of the Act will depend upon the factual adjudication under S.19A. When that power to adjudicate has been specifically conferred on the Central Government and before such adjudication is rendered is a pending reference, it would be not only be inequitable but also improper to proceed with the matter, be it as a determination under S. 7A of the Act and much worse a criminal prosecution for breach of the provisions, on the supposition that the Act applies to the establishment. We could easily envisage a grave repercussion that would follow, if the other proceedings are prosecuted, inspite of the pendancy of the adjudication under S.19A. If a criminal prosecution is to be prosecuted on the assumption that the Act applies, and the penal provisions are attracted, even though the employer has raised the dispute as to the applicability of the Act and the matter is pending before the Central Government and the employer gets punished by the criminal process and if ultimately the adjudication under S.19A comes to be

rendered in favour of the employer. Excluding him from the preview of the Act itself, can the damage caused to him by the imposition of the penalty be it so a fine and still worse imprisonment be mollified? Equally so, the levy, demand and collection of contribution despite the pendency of the dispute raised by the employer as to the applicability of the Act before the Central Government will cause grave prejudice to him if ultimately he succeeds before the Central Government. Reimbursement and restitution will be practical impossibilities.

9. We are not very much concerned here as to how the matter should go before the Central Government under S.19A of the Act. One view of the Courts is that it could be done only at the instance of the authorities and the difficulty arising in the matter of giving effect to the provisions of the Act could only be a difficulty experienced by the authorities in the administration of the provisions of the Act and the provident funds. There is a contrary thinking to the effect that the employer is the person ultimately to be affected and hence he must also have an equal right to approach the Central Government to resolve a dispute of the nature contemplated under S.19A of the Act. The view of the Bench of this Court in M/s. East India Industries (Madras) Private Ltd. v. The Regional Provident Fund Commissioner, Madras 77 L.W. 199=1964-I.M.L.J. 441, is both the Employer and the Authority have equal right to approach the Central Government. But, if once an approach to the Central Government has been made under S. 19A of the Act, the question is, will it be in order for the authorities to enforce the provisions of the Act, be it so through the process available to them under the Act or by prosecuting the employer for non-compliance with the provisions of the Act. If the ultimate decision by the Central Government, which has been clearly declared to be final under S.19A of the Act, turns out to be in favour of the employer, the repairing of the damages done to him by enforcing the provisions of the Act will be a poser difficult of any satisfactory solution. There is another angle term which the matter could be looked at. As the doors have been kept open for the Authority as well as the employer to approach the Central Government under S.19A for an ultimate decision as to whether the establishment is one to which the Act applies, an anomalous position leading to discrimination would emerge if the enquiry under S. 7A or the proceedings in pursuance of the findings arrived at the enquiry, are pursued by the Authority inspite of the pendency of an application filed by the employer to the Central Government under S. 19A of the Act. The anomaly would arise thus. If the Authority by himself chooses to make the reference to the Central Government under S. 19A, he may also at his option choose neither to proceed with the enquiry under S.7A, nor launch proceedings pursuant to his findings in such enquiry on the basis that the Act applied to the establishment concerned. If, on the other hand, the employer approaches the Central Government under S.19A, he will be at the mercy of the Authority with regard to the prosecution of the very same processes. It is needless to say that a provision in a statute cannot have operative force in different degrees depending upon the whim and fancy of the Authority enforcing the provisions of the

statute.

10. We shall also not trouble ourselves with the other question as to how far the decision under S. 19A by the Central Government is final. The scope of the adjudication has been delineated under the Act. Any over-stepping of the limits prescribed for such adjudication or the adjudication running contrary to the jurisdictional sphere conferred on the Central Government will all be matters for scrutiny when such contingencies do arise before the appropriate forum and through the appropriate process. In its wisdom, the Legislature decided that these questions set out in S.19A of the Act should have adjudication by and the consequent directions should issue from the Central Government. The provisions of the Act do not confer such jurisdiction on any other authority constituted under the Act.

11. We need not necessarily, for the purpose of dealing with the limited question that has arisen before us, advert to the aspect as to when once a decision has been rendered by the Central Government, upholding the applicability of the Act, to a particular establishment, should the provisions be applied retrospectively or prospectively. Equally so, it is not possible to countenance a stand that there is likely to be delay on the part of the Central Government and that will practically defeat the intendment of the Act, which is essentially a measure for welfare of the employees. The authority conferred with the power must be conscious of its significance and the absolute necessity for its exercise with utmost expedition and it cannot afford to shirk its responsibility to render the decision without any undue delay. That there is likelihood of delay on the part of the Central Government certainly is not a ground for saying that despite the pendency of the resolution of the controversy before the Central Government, the provisions of the Act must stand enforced whatever be the ultimate prejudice, the employer may suffer. In our view, any visualised delay on the part of the Central Government is not at all germane for the purpose of deciding the question of working out the provisions of the Act in a concomitant manner.

12. Coming to the pronouncement of the earlier Bench of this Court in Premier Studs and Chapplets Co. and others v. State 1980 L.W. (Crl.) 226=(1980) 56 F.J.R. 611 it was dealing with a case where the employers were prosecuted for offences under Ss. 14(1-A) and 14A(1) of the Act, and one of the defences raised was that the prosecution was not competent during the pendency of an appeal preferred under S.19A. The question referred to and answered by the Bench was couched in general terms as follows:

Whether the provisions of the Employees'' Provident Funds and Family Pension Fund Act could be enforced pending decision on a reference under S.19A of the Act?

In answering the question in the affirmative, one of the reasonings expressed by the Bench runs as follows:-

If the establishment of the revision petitioners in a factory engaged in any one of the industries specified in Schedule I and in that factory 20 or more persons are employed, then automatically Ss.6 and A6 came into operation and contributions and payments have to be made by the employer as laid down in those sections.

We are not able to appreciate and accept this reasoning, because the very question whether an establishment, which is a factory, is engaged in any industry specified in Schedule I, if any dispute is raised over the same, has to be resolved by the Central Government, when it comes before it, and before that resolution, to go by a supposition and impose the burden under the Act. On the employer, could not have been the intendment of the Legislature when S.19A was introduced in 1953, with the avowed object of providing a machinery for removal of doubts and difficulties. The very applicability of the Act depends on the satisfaction of the conditions set out therefor, and if a doubt or difficulty arises as to its satisfaction, it needs resolution, and before its resolution, when the matter has already come before the Central Government, there is no question of the provisions of the Act applying to such an establishment by their own vigour. Another reasoning of the earlier Bench is,

There is no section in the Act which makes the operation of the Act subject to any decision by an authority.

This reasoning again presupposes that the Act applies to an establishment. The very applicability is the bone of contention raised and pending before the authority specifically constituted to decide this question. It is not a question of postponing or suspending or deferring the applicability of the Act to an establishment. Postponement, suspension and deferment all presupposes the applicability of the Act. Only when the Act applies, there could be a postponement, suspension and deferment of the Act. The earlier Bench has placed reliance on the pronouncement of the Full Bench of the High Court of Gujarat in Jintan Clinical Thermometer Co. (India.) Ltd. v. Union of India and another (1974) 46 F.J.R. 371 and the pronouncement of the Bench of the High Court of Kerala in Provident Fund Inspector, Ernakulam v. Auto Transport Union (Pvt.) Ltd. and others 1964-I-L.L.J. 562 . None of these pronouncements have looked into the question from the angle looked at by us. Further the observations of the Supreme Court in Union of India (UOI) and Another Vs. Ogale Glass Works, are to the effect that.

Though there is a hierarchy of officials, nevertheless, it is only the Central Government that has been given power under S.19A to give a direction not inconsistent with the provisions of the Act if any doubt arises regarding one or other matters referred to in clauses (i) to (v) and that power is to be exercised when any difficulty or doubt arises in giving effect to the provisions of the Act.

The earlier Bench in Premier Studs and Chapplets Co. and other v. State 1980 L.W (Crl.) 226>=(1980) 56 F.J.R. 611, referred to the pronouncement of another Bench of this Court in Regional Provident Fund Commissioner. Madras v. K.R. Subbaier Tape

Factory Woriyur (1965-66) F.J.R. 309. The present specific question was not at all put in issue in that case and the Bench was more concerned with the question of enforceability of prediscovery dues.

13. For all the foregoing reasons, we are not able to concur with the ruling of the earlier Bench in Premier Studs and Chapplets Co. and others v. State 1980 L.W. (Crl) 226= (1980) 56 F.J.R. 611. This question very often comes up for consideration before Courts and certainly before the authorities who are enjoined with the duty to enforce the provisions of the Act and it is better that an authoritative pronouncement is rendered by a larger Bench over this question, which was set out as follows to be referred to it for decision.

Can the provisions of the Act be enforced when the question of applicability of the provisions of the Act is pending adjudication before the Central Government under S.19A of the Act?

We, therefore, direct the papers in this case to be placed before Our Lord the Chief Justice for a reference to a Larger Bench for a decision on the aforesaid question.