

ACME Company Ltd. Vs Union of India (UOI)

Court: Delhi High Court

Date of Decision: Sept. 13, 2004

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

Citation: (2005) 1 LLJ 250

Hon'ble Judges: Madan B. Lokur, J

Bench: Single Bench

Advocate: V.P. Singh and Nikhil Krishnamurthy, for the Appellant; R.C. Chawla, for the Respondent

Final Decision: Allowed

Judgement

Madan B. Lokur, J.

The Petitioner is aggrieved by a notice dated January 16, 1989 and follow up action taken thereupon including a letter

dated April 17, 1989 and an apprehension of prosecution under the provisions of the Employees' Provident Funds and Miscellaneous Provisions

Act, 1952 (the Act).

2. The question that arises in this case is whether a firm of advocates is amenable to the provisions of the Act. Learned counsel for the Petitioner

has drawn my attention to Section 1(3)(b) of the Act, which reads as follows:-

1. Short title, extent and application.

(1) &(2) xxx xxx xxx

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

(a) xxx xxx xxx

(b) to any other establishment employing twenty or more persons or class of such establishment which the Central Government may, by notification

in the Official Gazette, specify in this behalf.

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.

3. On a plain reading of the above, it is clear that clause (b) postulates two situations, namely, (1) relating to an establishment employing twenty or

more persons; and (2) a class of such establishment which the Central Government may, by notification in the Official Gazette, specify in this

behalf.

4. A perusal of the counter affidavit filed by the Respondent shows that it has acted on the basis of the second part of clause (b), namely, on the

basis of a notification relating to a class of establishments as being subject to coverage under the Act. The notification dated September 17, 1964

reads as follows:-

G.S.R. 1398.- In exercise of powers conferred by clause (b) of Sub-section (3) of Section 1 of the Employees' Provident Funds and

Miscellaneous Provisions Act, 1952 (19 of 1952), the Central Government hereby specifies every establishment of-

(i) attorneys, as defined in the Advocates Act, 1961 (25 of 1961),

(ii) chartered or registered accountants, as defined in the Chartered Accountants Act, 1949. (38 of 1949),

(iii) cost and works accountants within the meaning of the Cost and Works Accountants Act, 1959 (23 of 1959),

(iv) engineers and engineering contractors, not being exclusively engaged in building; and construction industry,

(v) architects,

(vi) medical practitioners and medical specialists, in which twenty or more persons are employed, as the establishment to which the said Act shall

apply with effect from October 31, 1964.

5. A perusal of the above would show that a firm of attorneys, as defined in the Advocates Act, 1961 is covered by the provisions of the Act. It is

on this basis that action was sought to be initiated in respect of the Petitioner.

6. With the passage of time, the definition of the word "attorney" which originally appeared in Section 2(c) of the Advocates Act, 1961 has since

been deleted sometime in 1976. Similarly Section 31 of the Advocates Act which was a special provision for attorneys has also been deleted with

effect from sometime in 1976. Consequently, the very basis for covering the petitioner under the provisions of the Act has been wiped out.

7. It is not the case of the Respondent in the counter affidavit or on the basis of documents placed on record that an inquiry was sought to be made

in respect of the Petitioner under the first part of clause (b). Therefore, it is not necessary for me to go into that aspect of the matter.

8. Mr. Chawla, learned counsel for the Respondent has raised a preliminary objection that since there is still no adjudication in terms of Section 7-

A of the Act, the writ petition is pre-mature. It is submitted that it is only after an order is passed u/s 7-A of the Act that the Petitioner can be

aggrieved and that grievance can be addressed by an Appellate Authority.

9. I am not inclined to accept the contention of learned counsel for the Respondent on the facts of the present case. Firstly, the writ petition was

entertained as far back as in 1989 and in view of the facts of this case it will not be appropriate to relegate the Petitioner to any alternate remedy

that may have been available to the Petitioner.

10. More to the point, I think is the question of jurisdiction, that is, whether it can at all be contended that the Petitioner, being a firm of advocates,

can be covered by the provisions of the Act for that reason alone. As already discussed, the entire basis for initiating an inquiry against the

Petitioner was that it is the firm of attorneys and an establishment of attorneys is covered by the provisions of the Act, in view of the notification

dated September 17, 1964. As already noticed, this notification, in so far as it applies to attorneys, has lost its value because of the fact that the

definition of attorney has since been deleted from the Advocates Act, 1961,

11. Under the circumstances, there is no option but to set aside the impugned notice dated January 16, 1989 and all further steps taken by the

Petitioner pursuant thereto.

12. The writ petition is allowed.

13. No costs.