

ANDHRA PRADESH HIGH COURT

Nazeena Traders (P) Ltd

Vs.

Regional Provident Fund Commissioner

Writ Petis. Nos. 907 of 1960; 574, 905, 982, 1002, 1014, 1087, 1090, 1152, 1159, 1198, 1202, 1216, 1314, 1394, of 1961; 15, 66, 274, 280, 357, 415, 479, 540, 542, 543, 544, 577, 582, 588, 591, 764, 897, 964, 1158 of 1962; 17, 37, 90, 119, 125. 129,348, 630, 771, 781, 878, 907, 972, 992, 1039, 1325, 1344, 1459 of 1963; 426, 561, 595 of 1964

(P. Chandra Reddy, C.J. and Chandrasekhara Sastry, J.)

01.09.1964

JUDGMENT

Chandra Reddy, C.J.

1. These writ petitions involve some common questions of law relating to the proper interpretation of the provisions of the Employees' Provident Funds Act, 1952 (hereinafter called the Act). They are filed by some of the factories and commercial establishments in this State to which the Act has been made applicable by the issue of notifications from time to time by the Central Government pursuant to the powers derived by them under the relevant provisions of the Act. The relief asked for in all these petitions is the issuance of a writ of mandamus to restrain the concerned Regional Provident Fund Commissioners from enforcing the provisions of the Act. What occasioned the institution of these petitions was the service of notice by the proper Commissioners on these establishments requiring them to remit the employers' share of contributions towards the provident fund and administrative charges and to return statements as required by the relevant paragraphs of the Provident Funds Scheme, 1952 with effect from the dates the scheme was made applicable to each of them.

2. Before we deal with the points debated in these petitions, we will do well to set out the relevant statutory provisions bearing on these controversies. This Act was passed for the purpose of providing for the institution of Provident Funds for the employees in factories and other establishments, it was made applicable by Section 1(3), subject to the provisions contained in Section 16,

"(a) to every establishment which is a factory engaged in any industry specified in Schedule 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."

3. We are unconcerned with Sub-Section (4) in this enquiry and so we can conveniently omit it.

(5) An establishment to which this Act applies shall continue to be governed by this Act notwithstanding that the number of persons employed therein at any time falls below twenty;

Provided that where for a continuous period of not less than one year the number of persons employed therein has been less than fifteen, the employer in relation to such establishment may cease to give effect to the provisions of this Act and any Scheme framed thereunder, with effect from the beginning of the month following the expiry of the said period of one year, but he shall, within one month of the date of such cessation, intimate, by registered post, the fact thereof to such authority as may be specified by the appropriate Government in this behalf."

4. Section 2(f) contains the definition of an 'employee'. It says :

" 'employee' means any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of an establishment, and who gets his wages directly or indirectly from the employer, and includes any person employed by or through a contractor in or in connection with the work of the establishment."

5. Section 4 confers power on the Central Government to add to Schedule I "any other industry in respect of the employees whereof it is of opinion that a provident fund scheme should be framed under this Act", by issuing a notification in the Official Gazette. It is Section 5 that empowers the Central Government by a notification in the Official Gazette to frame a scheme to be called the Employees' Provident Fund Scheme, for the establishment of provident Funds under this Act for employees or for any class of employees and to specify the establishments or class of establishments to which the said scheme shall apply. Sub-Section (2) of Section 5 recites :

"A scheme framed under Sub-Section (1) may provide that any of its provisions shall take effect either prospectively or retrospectively on such date as may be specified in this behalf in the Scheme."

6. Section 6, which contemplates the payment of contribution by the employer to the Fund, in so far as it is material for the present enquiry, reads as follows :

"The contribution which shall be paid by the employer to the Fund shall be six and a quarter per cent of the basic wages, dearness allowance and retaining allowance (if any) for the time being payable to each of the employees, and the employees' contribution shall be equal to the contribution payable by the employer in respect of him and may, if any employee so desires and if the Scheme makes provision therefore, be an amount not exceeding eight and one-third per cent, of his basic wages, dearness allowance and retaining allowance (if any) :"

* * * *

7. Under Section 7, the Central Government may, by Notification in the Official Gazette, add to, amend or vary any scheme framed under the Act. Section 8 provides for the mode of recovery of money due from the employers.

8. Section 14 prescribes penalties for any contravention of the provisions of the Act or default in compliance with them. Sections 14-A and 14-B deal with offences by companies and the power to recover damages respectively. Section 16, in so far as it is of immediate relevance to the present enquiry, reads :

"(1) This Act shall not apply -

* * * *

(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."

The Central Government derives power from Section 17 to grant exemption in certain cases. Under this Section, the appropriate Government may, by notification in the Official Gazette, grant exemption to any of the establishments to which the Act applies from the operation of all or any of the provisions of the scheme under certain circumstances and subject to such conditions as may be specified in that notification. Another provision of the Act which we have to notice is Section 19-A. It recites :

"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 clause (b) of Sub-Section (3) of Section 1; or

(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 to 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 if the doubt or difficulty; and the order of the Central Government, in such cases, shall be final."

9. Schedule I, envisaged in Sections 1(3), 2(1) and 4 lists the industries to be governed by the Act, while Schedule II refers to matters for which provision could be made in a scheme.

10. Thereafter, the Central Government, by Notifications issued from time to time, brought several industries and establishments within the purview of the Act including those involved in these petitions.

11. In exercise of the powers conferred by Section 5 the Central Government published what may be termed the Employees' Provident Funds Scheme, 1952. The relevant paragraphs of the scheme will be referred to in the appropriate context.

12. We will now proceed to deal with the general grounds on which the notices issued to the petitioners for compliance with the provisions of the Act have been impugned.

13. The first point presented is that Sub-Section (3) of Section 1 contemplates employment of twenty or more persons by the employer himself and it does not take in workmen engaged by or through a contractor and that the latter category of labourers are not the employees of the establishment. It is only a person whose work the hirer has authority to control and supervise that would answer the description of an employee within the connotation of Sub-Section (3). The relationship of master and servant should exist between the establishment and the workmen in order to answer the description of 'employee' in that section. If this test is not satisfied, persons working in the establishment cannot be regarded as employees for purposes of the Act, proceeds the argument of the learned counsel. Stress is laid on the work 'employing' in clause (b) of Sub-Section (3) of Section 1 in support of his stand. It is urged that the expression "establishment employing" is indicative of the intention of the legislature to confine the operation of the Section to cases of the establishment itself engaging the services of the required number of persons and to exclude the contract labour from its ambit.

14. As substantiating this proposition, some rulings of the Supreme Court have been called in aid, the chief of which is *Chintaman Rao v. State Of Madhya Pradesh*¹, The question that presented itself in that case was whether Sattedars and their coolies who rolled beedies for the bidi factories were Workers within the definition of Section 2(1) of the Factories Act. There, the management supplied tobacco and in some cases beedi leaves to the Sattedars and the latter supplied the factory, beedies made out of this material either themselves manufacturing them or entrusting the work to third parties for which they were paid at a particular rate after delivery and approval.

15. The manager of the beedi factory was prosecuted for failure to include these workers in the register of adult workers and to make entries of their attendance in the register.

¹(1958) SCR 1340 : AIR 1953 SC 388

16. The defense of the accused was that the Sattedars and their coolies were not workers within

the words of Section 2(1) of the Act and hence the non-inclusion of their names in the register or the absence of entries in regard to them did not constitute a breach of the relevant provisions of the Factories Act.

17. This objection prevailed with their Lordships of the Supreme Court, when the matter ultimately reached that Court. The judgment there rests on the definition of "worker" which, unlike the definition in the enactment which is of wide import, relates only to direct labour and does not comprehend contract labour. So, that pronouncement is not of any assistance to the petitioners. The other decisions relied on by them are of a like nature and they bear on definition of workman which are not analogous to the present one and so are not in point. As such, they do not need a detailed consideration.

18. In our opinion, none of the rulings to which our attention was invited, has any parallel here. We have to solve the problem posed in the light of the language of the section and the wording of the definition of 'employee' in the Act.

19. The contention urged in this behalf by the learned counsel for the petitioners might have been valid but for the breadth of the definition of 'employee' as contained in Section 2(f) taking in 'contract labour'. The legislative competence of the Parliament to include contract labour within the sweep of this definition cannot be challenged. The Parliament derives competence from item 24 of List III of the Seventh Schedule to the Constitution to legislate for the welfare of labour including conditions of work, Provident Funds, employer's liability, workmen's compensation, invalid and old age pensions and maternity benefits. It is for the legislature to decide as to what should be regarded as employment and who should be classed as employees. Whether the definition should comprehend contract labour or should have restricted content, is a matter affecting the policy and not the validity. The statute can select some circumstance providing some relation to the work in the establishment. Undeniably, such a connection exists between the contract labour and the work of the establishment. Presumably, the Parliament thought that the circumstance that a person employed through a contractor worked in the factory or establishment provided sufficient nexus for the inclusion of contract labour in the definition. There is support for this principle in *Tata Iron and Steel Co. Ltd. v. State of Bihar*²,

20. It is maintained by the learned counsel for the petitioners that the definition cannot be imported into clauses (a) and (b) of Sec, (3) and they should be interpreted on their language and not to the light of the definition. If the legislature intended that the labourers engaged by the contractor should fall within ambit of these clauses, it could have employed appropriate language in the two clauses to make them comprehensive, proceeds the learned counsel.

21. We are not impressed by this argument. The very purpose of defining a term in a statute is to read it into the substantive provisions of the Act, so that the language of the Act may be shortened, if that purpose is not to be served by the statutory

² S. T.C. 267 : AIR 1958 SC 452

definition in Section 2(f), we fail to see what other function it performs in the context of the enactment. If this definition is not to be used for interpreting the relevant provisions of the Act, it would become superfluous and otiose.

22. It is stated by Craies in his 'Statute Law' (Sixth Edition) at page 161 :

"The more modern statute contains in the form of an interpretation clause, a little dictionary of its own, in which it endeavors to define, often arbitrarily, the chief terms used.

* * * *

23. It is thus plain that it is to avoid the repetition of the expression in every one of the sections of the enactment that a term is defined. We are convinced that Section 1(3) cannot be interpreted in isolation and independent of the definition. That being the real position, the definition brings in contract labor within the scope of Section 1(3) of the Act. It is not disputed that if the definition applies to Section 1(3). It includes conspiracy the learned counsel for the petitioners might have tract labourers.

24. Authority for this position is to be found in *Annamalai Mudaliar and Bros. v. R.P.F. Commissioner*³, In that case, Rajagopalan J., held that the scope of the expression 'fifty or more persons' employed in Section 1(3) of the Act was to be construed with reference to the definition of 'employment'.

25. We cannot, therefore, accede to the proposition that the definition has to be ignored in interpreting clauses (a) and (b) of Section 1(3).

26. It is next urged by Sri Srinivasamurthy, learned counsel for some of the petitioners, that his view of ours is not in consonance with the principle underlying *Orissa Cement Ltd. v. Union of India*⁴, We do not think that this pronouncement of the Supreme Court renders any assistance to the petitioners. The problem that presented itself before their Lordships of the Supreme Court was whether the principal notification extending the benefits of the Provident Fund Scheme to contract labour and rendering the principal employer liable to contribute to provident fund for their benefit, was unconstitutional. It was held by the Supreme Court that since the employer could not deduct the employee's share of contribution from his wages, the notification operates unfairly and harshly on persons employing contract labour, that it results in discrimination between contractors who employ contract labour and those who employ direct labour and that, consequently, the scheme could not be said to be reasonable. It was for that reason that the Supreme Court struck down the schema as unconstitutional and void.

27. It is thus plain that the Supreme Court was not concerned with the controversy that has arisen in the present case. There, the validity or the applicability of this definition was not in issue. There is nothing in the judgment of the Supreme Court which lends colour to the theory that the definition of 'employee' does not govern the construction of Section 1 or other material provisions. Moreover, if the interpretation

³1955-2 Mad LJ 271: (AIR 1955 Mad 387)

⁴ AIR 1962 SC 1402

suggested on behalf of the petitioners were an accepted one, their Lordships would have declared the notification to be void as being repugnant to Section 1(3) and they would not have embarked on a discussion as to the impact of the notification on the rights of the employers under Article 19 of the Constitution. It looks to us that they proceed on the assumption that this

definition was applicable to the scheme.

28. We may point out that it was to fill up the lacuna pointed out by their Lordships in their judgment, that Section 8-A was introduced by the Parliament in the year 1963 by the Amendment Act, 28 of 1963. However, we are unconcerned with this amendment which was to come into force on a date to be appointed by the Central Government, since the liability that is sought to be fastened on the employers arose prior to the amendment.

29. For the reasons indicated above, we are unable to uphold the contention of the petitioners in this behalf. In our considered judgment, Section 1(3) is not confined to direct labour and the contract labour also enters the determination as to the applicability of that Sub-Section.

30. We have next to consider whether Clauses (a) and (b) of Section 1(3) are wide enough to cover casual labour. It is maintained by the learned Government Pleader that the requirement as to the numerical strength is satisfied if twenty persons are engaged in connection with the work of an establishment even for a day or a fraction thereof. This argument is sought to be reinforced by the unreported judgment of a Division Bench of the Madras High Court in Writ Appeal No. 193 of 1962 (Mad). It is true that this ruling vouches the proposition advanced by the learned Government Pleader. The learned Judges there observed :

"It is admitted on behalf of the appellant that fifty people worked at least for one day in each year. This, in our opinion, will be sufficient to bring the case within the purview of Section 1(3) of the Act. The Act is an ameliorative measure-intended to benefit the permanent workers of an establishment. What is necessary for these permanent workers to get the benefit is that there should be fifty workers in that factory. In our view, it would be sufficient if that condition is satisfied as least for one day."

31. With great respect, we are unable to subscribe to the rule stated therein. It is true that this legislative measure is an ameliorative one. As the same, it cannot be overlooked that benefits are intended to be conferred on workmen in establishments that are in a position to employ twenty or more persons. It may be incidentally mentioned here that originally, i.e., prior to the Amendment Act, 40 of 1960, the number of employees in the establishment that would be brought within the scope of Section 1(3) was fixed at fifty.

32. We find it difficult to agree with the view that twenty or more persons can be said to be employed or that an establishment employs twenty or more persons merely because on one day or two days the services of twenty or more persons were engaged for a particular purpose. To accept this contention would be to unduly enlarge the content of the section. To attract the applicability of Section 1(3), the number of persons should come up to a minimum of twenty. The underlying idea seems to be that the establishment should have twenty persons on its muster rolls and working regularly.

33. Could it be asserted that a factory gives employment to twenty persons merely because twenty persons are engaged by that factory on a particular day for some special job ? In our opinion, the answer must be in the negative. The Sub-Section contemplates the required number of people working continuously in the factory or other establishment in a year.

34. A careful scrutiny of the several provisions of the Act will give support to our conclusion. Section 1(5) of the Act, which we have already set out, is a pointer in that direction. It postulates that the establishment should start with the number of workers envisaged by Sub-Section (3) and it is only when the workers fall below that number for a continuous period of not less than one year that the employer is absolved of his obligation to give effect to the provisions of the Act provided he observes the procedure mentioned therein. The language of this section does not bear out the interpretation that the learned Government Pleader wants us to adopt. It will be missing the significance of the clause "that the number of persons employed therein at any time falls below 20 provided that where for continuous period of not less than one year the number of persons employed therein has been less than fifteen", if we were to say that the employment of twenty persons even for a day would fulfill the requirement as to the numerical strength. This Sub-Section contains an indication that there should be continuity of employment for a particular period. The concept of continuity of service seems to be embedded in Sub-Sections (3) and (5). Twenty persons should ordinarily be employed in a factory or other establishment before Section 1(3) could be extended to it. They should put in a continuous service for the requisite period to satisfy the definition of the employee. If on a special occasion or for a special work some coolies are engaged for a few days, they cannot be termed, in our opinion, employees within the mischief of Section 1(3).

35. Section 19-A also seems to strengthen our view. A doubt as to the number of persons employed in an establishment could arise only if the employment of twenty persons in the establishment were a normal feature. A legitimate doubt cannot be said to arise if the condition as to the number is satisfied - if twenty persons work in the establishment even for a day or two. It is not necessary for us to labour this point any further as we feel that the provisions of the Act are inapplicable to establishments which do not employ twenty or more persons to work therein for a period of one year. It follows that 'casual labor' falls outside the scope of Section 1(3). The fact that the casual labor is engaged by or through a contractor does not make any difference for the decision of the question, the only criterion being whether they were casual laborers or not.

36. On this discussion, it follows that the establishments, whose employees do not come up to twenty, excluding casual labourers, do not fall within the purview of Section 1(3) and so the provisions of the scheme cannot be applied to them. The respondents will, therefore, examine this question in the light of these observations, and decide (sic) the scheme should be applied to any of these establishments excluding casual labor.

37. We have now to deal with another ground, of attack against the demand for payment of contribution for the period between the date of notice and the notification extending the scheme to those establishments. It is urged by the various counsel appearing for the petitioners that the scheme cannot be given retrospective operation so as to require the establishments pay contributions for the period between the dates of notification and the issue of notices impeached before us. The obligation to make the contribution commences only from the date of notice and not from the time the scheme is applied to them. The pre-requisite to the employer being made liable to pay his share of the contribution is the employee becoming a member of the Fund. The employer's obligation in tills regard does not arise till that event occurs. Since none of the employees chose to become members of the fund so far, no liability to contribute to the Provident Fund for the back period can fasten on the employer. The demand now made by these

Regional Provident Commissioners is opposed to the spirit and scheme of the Act, proceeds the argument of the learned counsel. This submission is mainly founded on a decision of the Calcutta High Court and two decisions of the Madras High Court.

38. In *Aluminium Corporation of India Ltd., v. R.P.F. Commissioner*⁵, the petitioner-company complained against an order of the Government, addressed by the Regional Provident Fund Commissioner, purported to be made under Section 19-A of the Act, informing the petitioner that their factory would come under the purview of the Act and the scheme framed thereunder with effect, from 1-11-1952 and requiring them to comply with the provisions of the Act with effect from that date and also to pay the employers' share of contributions and administrative charges together with damages etc. Various contentions were raised in support of the Writ Petition. Mukherji J., held among other things that no retrospective operation could be given to the scheme and as such the company could not be directed to pay the contribution for the back period since retrospective implementation would be opposed to the purposes and the objects of the Act. In his opinion, by applying the scheme and the Act retrospectively, especially when the period was five years, the Government was asking the company to do what was impossible and also something which was entirely inconsistent with the statute. Observes the learned Judge.

"First, the preamble to the Act says that it is an Act "to provide for the institution of provident funds for employees in factories and other establishments." In other words the object of the Act is the provident fund for employees. It is therefore inapplicable in respect of those employees who have left the service by taking away their own provident fund moneys because the company itself has its own provident fund scheme."

39. It appears from these observations that, the company had its own provident fund scheme and admittedly several of the employees had left the service before the issue of the notice. Such a complication does not obtain in this case and we need not consider the effect of the employees leaving the service withdrawing the provident

⁵ AIR 1958 Cal 570

fund under the provident fund scheme of the company.

40. But there are observations which indicate that the employer's share of the provident fund could not be collected in respect of those employees who had left the service before the issue of notice.

"Besides, by paragraph 32 of the scheme, it is provided that "the amount of a member's contribution paid by the employer shall, notwithstanding the provisions in this Scheme or any law for the time being in force or any contract to the contrary, be recoverable by means of deduction from the wages of the member and not otherwise." That means, the only method of recovery of a member's share of contribution paid by the employer is by means of deduction from the wages of the member and by no other. Now, how, is that going to apply to cases of those employees who have left the employer's service during the last five years. Obviously, that provision cannot be applied. Therefore, the order of 23rd October, 1957 of the Government of India by which the Company was required to comply with all the provisions of the said scheme with effect from "the 1st November,

1952" is against the scheme itself, and is impossible of performance. It is inconsistent with the scheme; it is inconsistent with the Act. It is, therefore, bad on the express terms of Section 19-A of the Act.

In fact, retrospective application of many other provisions of the scheme relating to the contribution cards; and returns is quite impossible."

41. It is not seen that this learned Judge also viewed the matter from the angle of employees, who are no longer in the factory. He did not discuss the general aspects of the matter, namely, whether the employer's share of contribution could to be called for in respect of all employees.....whether continuing in service or had already left. It cannot always be presumed that the persons working to a factory or other establishment on the date on which the scheme was put into effect in regard thereto had ceased to be workers on the date of the notice. Moreover, the hardships pointed out to the learned Judge in the passage extracted above relate only to the collection of the share of employees who are no longer in the service of the establishment. But these hardships do not pertain to the payment of the employer's share of contribution. We are not here called upon to decide as to whether the employer could be required to pay the employees' share of the contribution for the back period, as in none of these cases the respondents demanded such a contribution.

42. In *Subbaier v. R.P.F. Commissioner*⁶, the petitioner was called upon to pay the employer's share of contribution and administrative charges for the period commencing from the date the scheme was applied to the petitioner to the date of the notice. This notice was challenged in a writ petition before the Madras High Court. Jagadisan, J., accepting the contention of the petitioner in regard to the demand for the contribution for the undiscovered period, ruled that the Commissioner could not call upon the petitioner to fulfill the obligation under the Act for a period of five years prior to the issue of the notice. After referring to paragraphs 26 and 33 of the scheme

⁶ AIR 1963 Mad 112

and Section 14-B of the Act the learned Judge observed :

"The gist of these provisions is such as to make them operative only on and from the point of time when the authorities hold that a particular unit is within the ambit of the Act and make a consequential demand in terms of the Act and the scheme. Any demand for a back period appear a to be not merely illogical and oppressive, but plainly inconsistent with the terms of the enactment, which are manifestly prospective in their operation."

43. We will presently show that the demand for the payment of employer's share of contribution for what may be called the undetected period far from being inconsistent with the terms of the enactment, is in consonance with the provisions of the Act and also with the spirit of the enactment. We may observe that there is no question of the scheme being given a retrospective operation when a demand is made for the employer's contribution in regard to the undiscovered period. It cannot be disputed that the Act is prospective in its operation and not retrospective. It cannot also be postulated that the scheme operates retrospectively when contributions are asked for from the time the scheme is put into operation. Retro-activity could be attributed only if an attempt was made to collect the contribution from a date prior to the issue of notification

extending the provisions of the Act to the particular unit. We cannot also agree that it is illogical and oppressive to call upon the employer to make the payment for the back period, having regard to the purpose and objects of the Act. We are unconcerned with the policy underlying the enactment as it is entirely a matter for the legislature.

44. In the proper context, we will examine the various provisions of the Act and the scheme and see whether this demand in any way violates any of the provisions thereof.

45. In *Evershine Metals v. R.P.F. Commissioner*⁷, Veeraswamy J., merely followed the earlier ruling of that court in AIR 1963 Madras 112 without any discussion on this issue. He adverted to that earlier decision and said that in view of that decision the demand for the earlier period could not be supported.

46. A contrary opinion was expressed by a Full Bench of the Kerala High Court in *Kokkalater Rice and Oil Mills Foundry v. R.P.F. Commissioner*⁸, It was held there that the owner of the factory was bound to make good the employer's share of the contribution for the back period, negating the contention of the petitioner that in the absence of contributions from employees, the Provident Fund Scheme could not come into force and in the absence if beneficiaries to avail of the Fund for whom alone it was intended by the Act, no purpose would be served by collecting contributions from the employer.

47. In the same trend of thought is the judgment of a Division Bench of the Patna High Court in *Lawly Sen and Co. v. R.P.F. Commissioner, Bihar*⁹, There it was held that the legal liability of the petitioner remained for payment of contributions with

⁷ AIR 1963 Mad 455

⁹ AIR 1959 Pat 271

⁸ AIR 1961 Ker 57 (FB)

effect from the date on which the scheme applied to the petitioner-company.

48. To a like effect is the judgment of a single Judge of the Allahabad High Court in *N.K. Industries (Pr.) Ltd. v. Commissioner R.P. Fund, U.P.*¹⁰, The dictum bearing on this question is contained in the following words :

"The petitioner should have made its own contribution and also that of the employees long before a demand was made from it. The petitioner could have, after making the contribution of the employee's share, recovered the same from the employee concerned. There is a duty cast upon the petitioner to contribute both the shares, i.e., its share as also that of the employee; inasmuch as the petitioner did not do so, it is to blame itself."

The Kerala High Court in AIR 1983 Kerala 57 (FB) relied on this passage in support of its conclusion. A similar proposition is contained in *Nagpur Glass Works Ltd. v. R.P.F. Commissions*¹¹, It was stated there that the liability on the part of the employer to make contribution in respect of the basic salary as also clearness allowance of each of the employees "springs into existence" from the date the scheme has been extended to the particular establishment and it is not dependent on the issue of the notice envisaged in clause (5) of Paragraph 28 of the scheme.

49. We will now cite a decision of a Division Bench of the Madras High Court, which interpreted a "parallel enactment, *Gopaldaswami v. Secretary of State*¹², which dealt with levy of duty on cotton. Under Section 9 of the Cotton Duties Act (II of 1896), which fell to be construed there, the Collector was empowered to assess the duty payable by a factory and the person who became liable to pay the duty to submit a return as required by Section 8 of that Act and to pay the duty every month. In that case, no steps were taken to collect this duty from the inception until February 1923 when the Revenue Divisional Officer called upon the plaintiff to submit a return showing the quantity and the value of the goods produced in the factory up to 31st December, 1922, so that the duty might be assessed and levied. In the absence of any response from the plaintiff, the Revenue Divisional Officer passed orders assessing the goods produced in the factory from its establishment up to the end of 1922. Having paid this amount under protest, he laid an action to recover this amount as an illegal levy, one of the grounds of the claim being that the Act did not provide for the collection of arrears. The argument relating to collection of arrears was met by the learned Judges in these words :

"Lastly, the argument from convenience comes somewhat ill from a party whose grievance if any arises from his own failure to comply with the Act. It may be that collection and assessment of the duty was fixed upon a monthly basis in the interests of the assessee as well as of the revenue, but, if the return which was to form the initial step in such a procedure is withheld, it would be unreasonable to insist that it is still incumbent upon the revenue department either to assess the duty month by month or to forego their revenue altogether. Where there is a liability and no express provision limiting its realization it is

¹⁰ AIR 1958 All 474

¹² ILR 57 Mad 237 : (AIR 1933 Mad 748)

¹¹ AIR 1961 Bom 157

to be inferred that it may be realized at any time after it arises."

50. The view of the learned Judges was that as the Cotton Duties Act created a liability to submit the return and to make payment on the basis of the rate prescribed in the Act, the factory was under an obligation to comply with these requirements and the plaintiff could not take advantage of his own failure to satisfy the terms of the Act or make a grievance of it when he is called upon to pay the arrears of duty.

51. This decision furnishes a close analogy to the instant case. It is thus plain that there is preponderance of authority in favour of the view that it is competent to the Provident Fund Authorities to claim compensation for the "undiscovered period" and that such a demand is not vitiated by any error or illegality.

52. We will now proceed to scan the provisions of the statute for the purpose of considering whether they are in harmony with the principle adumbrated in the line of cases which reinforce our view. As already observed, the purpose of this Act was to constitute Provident Funds for the employees in factories and other establishments. Section 6 requires the employer to contribute 62 per cent of the basic wages etc. and the employee to contribute an amount equal to it. Section 8

provides for recovery of the money due from the employer. Under paragraph 26 of the scheme, every employee, except an excluded employee, has a right to and can be compelled to become a member of the Fund from the beginning of the month succeeding that in which the scheme is brought into force in regard to that establishment. Paragraph 30 casts an obligation on the employer to pay both the contribution and recover the employee's share from his wages. Under paragraph 33, the employer has to ask his employee to furnish particulars concerning himself and his nominee required for the declaration form in Form 2 and the latter is bound to comply with the demand. Paragraph 36 makes it compulsory for the employer to send to the Commissioner within fifteen days of the commencement of the scheme a consolidated return in the form to be specified by the Commissioner and also to send to the Commissioner a return mentioning the names of employees qualifying to become members of the Fund for the first time during the preceding month together with the declarations in Form 2 furnished by such qualifying employees as also the names of persons leaving the service of the employer during the preceding month. Further, it is his duty to maintain accounts in relation to the amounts contributed to the Fund by him and his employees and to assist the Central Board in making such payments from the fund to his employees as are sanctioned by or under the authority of the Central Board. The mode of payment of contributions is dealt with by paragraph 38. It empowers the employer to deduct the employee's contribution from his wages. Within fifteen days of the close of the month, he should pay to the Fund that amount together with his own contribution as well as administrative charges in the manner prescribed in the paragraph and furnish a monthly consolidated statement to the Commissioner in the form to be specified by him showing the recoveries made from the wages of each employee and the amount contributed by the Employer in respect of each employee.

53. It is abundantly clear from these provisions that the liability to contribute to the provident fund is created the moment the scheme is applied to a particular establishment. It does not depend upon the vigilance of the Provident Fund Department and the issue of notice. The relevant paragraphs of the scheme call upon the employer to obtain particulars from the workmen and submit a return to the Provident Fund Commissioner following the procedure prescribed therefor as also to remit monthly, the contributions to the provident fund. These provisions also disclose that no option is left to the employee to become or not to become a member of the fund. He has a right to become a member and that he is bound to become one. It is a statutory mandate for the employer to require his employees to become members and for the employees to obey it. That being the correct position, the moment the scheme is put into operation, the liability of the employer to make the requisite contributions springs into being. It is the notification extending the provisions of the scheme to an establishment per se that attracts his liability and not that the service of notice on the employer that has this effect. In fact, if we were to assent to the theory propounded on behalf of the petitioners, it is not even the service of notice that imposes the liability to contribute but it is the enrolment of the workmen as members of the Fund that attaches the liability. If the obligation to contribute is to rest on the employees becoming members of the Provident Fund, it will be permitting the employer to select his own time to apply the scheme to himself, to fix the time from which his liability should start and to make advantage of his own default. If he chooses not to comply with the terms of the statute even after the receipt of notice, he does not incur any liability in this regard. We cannot read an intendment in the several provisions of the Act which gives such a latitude to the employer or leave it to his choice as to the time from which he should contribute to the fund. In our opinion, it is an absolute and unqualified liability and does not depend either on the vigilance or detection of

the department concerned or upon the will of the employer to make the workmen members or not or as to when they should be made members. The employers cannot be permitted to defeat the provisions of the Act by their own default. It should be remembered that this is a beneficent legislation and should be construed liberally so as to confer benefits on the employees to the maximum extent. It was enacted as a measure of social justice.

54. Sri Srinivasamurthy, learned counsel for some of the petitioners, then contended that if the employer does not obey the directions contained in the relevant paragraphs of the scheme, the only remedy available to the department is to put into effect the penal provisions of the enactment and they cannot seek to recover the contribution with effect from the date of the notification. He even goes further by arguing that if the employer fails to send either the returns or contributions monthly, he could only be prosecuted but could not be rendered liable for contributing to the Provident Fund at all.

55. The basis of this argument is Section 14 of the Act and paragraph 76 of the scheme which prescribe penalties for the contravention of the provisions thereof. Paragraph 76 indicates that it is mandatory on the part of the employer to make every employee a member of the Fund and to collect the employee's share of contribution in addition to paying his own contribution. We are not persuaded that they lend themselves to that construction and enable the employer to evade the liability to meet his demands arising under the Act. The existence of penal provisions does not disable the employer to call for the contributions, unless it appears from the whole purview of the Act that it was the intention of the legislature that the only remedy for infringement of the statutory duty should be to proceed under Section 14. We are unable to gather such an intention either from Section 14 or from any other provision of the Act. If he commits default in fulfilling his obligations in this behalf, recourse could be had to Section 8, which authorizes the appropriate Government to recover these payments as arrears of land revenue. The employer could not take refuge under the penal provisions of the enactment. It is futile to contend that either Section 14 or paragraph 76 of the scheme exhausts the remedies for the enforcement of the provisions of the Act. It is only an additional remedy provided by the Act. Even if they are to be regarded as alternative remedies. It does not avail the petitioners, as Section 14 was not invoked by the Department.

56. Further, the stage has not yet arrived when the employer could plead that he should be prosecuted and not be compelled to meet the demand since the Government have not yet sought to recover these payments by coercive process under Section 52 of the Madras Revenue Recovery Act. The moment the impugned notices were served upon the petitioners, they had approached this Court for the reliefs mentioned above. This, however, need not detain us any further, as it is our opinion that neither Section 14 of the Act nor paragraph 76 of the Scheme saves the employers from compliance with the demands, in question.

57. A question is put to us as to what should happen to the provident fund in regard to workers who have either left the employment of the petitioners or died in the interval between the date of notification applying the provisions of the scheme and the date of issue of the notice. The answer to this is obvious and is to be found in the relevant paragraphs of the scheme for the administration of the Fund.

58. Paragraph 50 contemplates the aggregate amounts received as the employers' and employees

contributions to the Fund to be credited to an account called the "Provident Fund Account". By reason of Paragraph 52, these amounts have to be invested in any of the Banks enumerated in Paragraph 22. Paragraph 53 deals with the disposal of the Fund. Paragraph 57 enables a member of the Fund who originally resided in one State but has shifted to another State, to apply to the Commissioner within whose jurisdiction he was originally resident, for a transfer of his account, to the State fund in which he has taken up his new residence. Under Paragraph 59 of the scheme, an account has to be opened in the office of the Fund in the name of each member in which his contribution as well as the contribution made by the employer in respect of him together with Interest will be credited. These two paragraphs give some indication that a person who left his employment in one concern and took up service in another concern or did not seek employment anywhere else thereafter, is not debarred from availing himself of the benefits of the Fund that has accumulated up to the particular point of time. He is as much entitled to make use of the Fund in the manner indicated in the several provisions of the scheme as any other workman who continues to serve in the same establishment and there is no particular reason why he should be deprived of the advantages flowing from the scheme.

59. Chapter VIII contains elaborate provisions for nomination, payments and withdrawals from the Fund. Two of the paragraphs, which play a prominent role in the context of the question relating to the death of a workman subsequent to the application of the scheme to a unit but before service of notice, are paragraphs 61 and 70, Paragraph 61, in so far as it is immediate relevance, recites :

"(1) Each member shall make in his declaration in Form 2, a nomination conferring the right to receive the amount that may stand to his credit in the Fund in the event of his death before the amount standing to his credit has become payable, or where the amount has become payable, before payment has been made."

The other sub-paragraphs deal with the right of the member and the manner in which he has to make the nomination. Paragraph 70 provides for the distribution of the accumulation of the fund in respect of a deceased member. It provides for payment to the nominee of the member in accordance with Paragraph 61, and, if no nomination subsists, it would become payable to the members of his family in equal shares. We are unconcerned in this enquiry as to the further details of the fund as respects such a member.

60. It is thus manifest that the fund built up in respect, of persons who expired between the two dates mentioned above goes to their nominees or their heirs. Therefore, the case of a worker leaving his employment in one concern or dying between the two dates does not present any formidable problem. For all these reasons, we are not disposed to give weight to the argument that the employer has no obligation to pay contribution from the date of the extension of the provisions of the scheme to the particular establishment and that it arises either from the date of the notice or from the date the employee is made to become a member of the fund. It is plain from the several provisions of the Act reproduced above that the underlying idea behind them is that the moment the Central Government decides to bring an establishment within the fold of the Act and issues the requisite notification, the scheme becomes applicable to that establishment, of its own force.

61. This takes us to the controversy bearing on Section 19-A. The argument founded on that

section is that till a decision is given by the Central Government on any of the matters specified in that section, the provisions of the scheme could not be put into effect in regard thereto. It must be mentioned at the outset that there is a conflict of judicial opinion on the question as to whether it vests only on the department to invoke the jurisdiction of the Central Government under Section 19-A or whether it is competent for a private party also to do it.

62. In *Bankimchandra v. Commissioner, R.P. Fund*¹³, a Division Bench of the Patna High Court ruled that the Central Government could issue a direction only when any difficulty arose in giving effect to the provisions of the Act and when any doubt arose as to any of the matters referred in that Section in the mind of the authority who had to deal with the subject end that if the authority did not entertain any doubt in that regard, there was no scope for any direction to be given by the Central Government at

¹³ AIR 1958 Pat 314

the Instance of a private party who might raise a dispute on any issue envisaged by the Section. The learned Judges added that the question of any dispute being raised by the party concerned was foreign to the section.

63. The opinion of a Division Bench of the Bombay High Court in AIR 1961 Bombay 157 is in consonance with the construction placed on the clause "if any difficulty arises in giving effect to the provisions of this Act", by the Patna High Court. The learned Judges thought that it is only the officer concerned that could make a reference to the Central Government in regard to any difficulty experienced by him in applying the provisions of the Act and that it is not within the province of a private party to move the Government for removal of difficulties in that behalf. The learned Judges refrained from expressing any opinion on the rights of the private party in relation to specific doubts bearing on Clauses (1) to (4). They observed that it was possible to argue that so far as these matters were concerned the private party could move the Government.

64. A contrary view was taken by Jagadisan, J., of the Madras High Court in *Raghava Iyengar and Co. v. R.P.F. Commissioner, Madras*¹⁴, The learned Judge held that the power to move the Central Government under Section 19-A was not restricted to the statutory authority and that it was open to the owner of an establishment to move the Central Government under Section 19-A to resolve the disputes of the nature mentioned above. We may incidentally mention here that Section 19-A does not speak of disputes and so no question of settling the disputes would arise in the context of Section 19-A.

65. A single Judge of the Kerala High Court in *D. Weaving Works v. E.P.F. Commissioner, Trivandrum*¹⁵, proceeded on the assumption that managements also could approach the Central Government on this topic in that case.

66. It is not necessary for us to resolve this conflict, as these writ petitions can be disposed of on a short ground, namely, that there is no reference made to the Central Government, either by the respondents or any of the petitioners herein inviting adjudication in respect of any of the matters listed in that section. Whatever might have been the force of the contention If any dispute is pending decision before the Central Government, it has none when no one has approached the Central Government for any direction.

67. In support of the theory that a decision under Section 19-A is a pre-requisite to the

enforcement of the provisions of the scheme irrespective of whether the Central Government has been actually moved or not either by the authorities administering the Act or by private parties, reliance is placed by the learned counsel for the petitioners on the judgment of Rajagopalan, J. In 1955-2 Mad LJ 271 : (AIR 1955 Madras 387). The petitioner therein raised an objection that the Act was in applicable on the ground that the number of labourers employed in the business did not come up to the minimum prescribed by the Act. The Commissioner did not give effect to this objection but treated the establishment as one falling within the scope of the Act.

¹⁴ AIR 1963 Mad 238

¹⁵ AIR 1963 Ker 210

There was no application to the Central Government under Section 19-A either by the petitioner or by the Commissioner. Rajagopalan, J. held that the competent authority to decide the question whether the establishment attracted the applicability of the Act or not was only the Central Government and that unless and until such a decision was rendered by the Government, the Act could not be put into operation. The learned Judge granted the prayer to the petitioner in the following words :

"The respondent should forbear from enforcing the demands already issued to the petitioner before the question whether the petitioner's is a factory within the meaning of Section 1(3) of the Act is decided under Section 19-A of the Act."

68. This view did not commend itself to Jagadisan, J. of the same High Court in AIR 1963 Mad 238 or to Veeraswami, J. in WP No. 619 of 3959 (Mad). in AIR 1961 Bombay 157, it was remarked :

"Merely because the letters have gone unanswered in regard to a difficulty, which, is of the making of the petitioner himself, it does not stand to reason to hold that the Regional Commissioner cannot enforce the demand made by him and must stay his hands till the Government have taken a final decision in that respect."

69. In our considered judgment, the principle enunciated in the latter category of cases seems to be correct and sound. It cannot be postulated that it is the duty of the Commissioner to set the machinery under Section 19-A in motion when a doubt arises in the mind of the party concerned. It is for him to invite a decision of the Central Government in regard to any doubt created in his mind (assuming that it is a genuine one) and he could not expect the Provident Fund Commissioner to take recourse to Section 19-A when he does not feel any doubt. Apart from the question whether the Commissioner could be required to move in the matter at the request of an establishment. It is nobody's case that even a suggestion was made by any of the petitioners to the respondent to approach the Central Government for a decision in the matter. If we were to accept the construction suggested by the petitioners, the enforcement of the provisions of the Act would be indefinitely postponed.

70. Moreover, under Section 19-A, the Government is not obliged to issue any directions. The absence of any decision by the Central Government under Section 19-A especially when that section is not resorted to by any one, cannot deter the authorities concerned from putting into operation the scheme in respect of any of the establishments. That being the real position, we cannot accept the argument of the learned counsel founded on Section 19-A. We accordingly

reject this contention.

71. There is one case in which a reference is pending before the Central Government, i.e., W.P. No. 1394 of 1961. The respondent is willing to stay the collection of the contribution from the petitioner till the Central Government decides the matter and the counsel for the petitioner represents to us that his client will abide by any adjudication by the Central Government. Having regard to the attitude of the respondent, it is not necessary to make any order in this petition.

72. We will now take up such of the writ petitions as raise questions peculiar to themselves. In W.P. Nos. 119 and 129 of 1963, Sri P.A. Chowdary, learned counsel for the petitioner, apart from contesting the authority of the department to apply the provisions of the scheme to establishments, the number of whose employees does not come up to twenty except by including the casual labourers hired for a few days in the year, urges that since the petitioner in W.P. No. 119 of 1963 had taken on lease the cinema theatre on 12-2-1959 he is entitled to have a further protection under Section 16(b) from the date of his lease. We have already said that casual labourers cannot be counted in determining the applicability of Section 1(3)(b) and that should be left out of account. If this establishment does not fall within the range of Section 1(3)(b) after leaving out of account the casual labourers, the petitioner will be entitled to the relief asked for and the respondent will re-examine the position in the light of the observations made by us. As regards the applicability of Section 16(b), we do not think that he can avail himself of this provision on the ground of his having taken the lease after a particular date. This section contemplates the postponement of the application of the Act only to establishments and not to the persons connected with the management, the object of the provision being to afford protection to the industries subjected to the obligations imposed by the Act in their infancy. The legislature seems to have thought that these industries would establish themselves on a firm basis within three or five years as the case may be and that thereafter they will be in a position to meet the demands of the Act.

73. A change of management of an establishment does not attract this section, since that does not amount to starting a new establishment and, consequently, it could not invoke the period of protection afresh from the date of the lease. We can derive some assistance from the Explanation to Section 16 in construing Section 16(b) : It reads :

"For the removal of doubts, it is hereby declared that an establishment shall not be deemed to be newly set up merely by reason of a change in its location."

If the change of locality does not invest the establishment with newness, we fail to see how change of management would bring about that result. The establishment is the same notwithstanding that the management had passed into different hands. This submission, in our opinion, is ill-founded and has to be rejected.

74. Another point presented by Sri Choudary is that the petitioner's concern does not come within the purview of the notification issued by the Government of India on the 19th June, 1961 which concerns only "cinemas including preview theatres, turn studios, film production concerns, etc." According to him, the connotation of cinemas does not comprehend film exhibition theatres and that expression only means film production centres. This argument does not merit serious consideration. The word 'cinema' is an abbreviated form of cinematograph, which, in its ordinary

signification, includes a film exhibition theatre. One of the meanings of this word as given in the Chambers 120th Century Dictionary is "a building in which photographs or pictures are shown." This need not detain us any further as even in common parlance a cinema is equated to a film exhibiting theatre. We have, therefore, no hesitation in rejecting this argument as lacking in substance.

75. The principles relating to the interpretation of Section 16(b), which we have laid down above equally governs W. P. No. 1344 of 1963. The petitioner herein urged that the mica mine in question the working of which was stopped on 25-7-1961 was purchased by him only on 19-10-61 from the other two partners, himself being one of the partners, and so the scheme could be applied to him only after the expiry of three years from the date of his purchase. We have dealt with a similar argument in W.P. No. 119 of 1963 and rejected it. Even the allegation that he did not have anything to do with the mine prior to 1961 does not seem to be correct. It appears from Paragraph 3 of the counter affidavit that during inspection on 25-12-1960 the Inspector was informed by the these Manager that the present petitioner was the employer from May, 1960, that in reply to the notice dated 6-3-1961 the petitioner did not raise any objection on the score of his being unconnected with the mine till he became the owner thereof. On the other hand, he undertook to pay all the dues and wanted forms to be supplied to him. Further, when he was prosecuted for failure to comply with the relevant provisions of the statute, he had not put forward the present case. It also appears that the criminal case against him ended in his conviction. In these circumstances, argument lacks even the basis. But even on the assumption of the correctness of these allegations, the petitioner cannot take advantage of the fact that he purchased the mine in October, 1961 for the reasons indicated above. This petition has, therefore, to be dismissed.

W.P. No. 37 of 1963 :

76. The petitioner herein is the sole proprietor of New Saraswathi Cafe situate in Ongole. His case is that the partnership which originally owned the restaurant was dissolved and he started his own business on 31-3-1962 in the same premises and the requisite license from the Municipality was obtained in the name of the petitioner alone and that, therefore, the scheme could be applied to this restaurant only after the expiry of five years from the date he commenced his new briefness.

77. It is seen from Paragraph 4 of the counter affidavit filed by the respondent that the business of the petitioner is not a new one but a continuation of the old one, there being only a change of management as also of the name. It to alleged in Paragraph 2 of the counter affidavit that the manager of this restaurant had informed the officer concerned on the 30th August, 1961 that the New Saraswathi Cafe was in existence since nine years and employed twenty two persons as on 16-7-61. As we have already stated, change of name or change of management would not secure it further protection under Section 16 of the Act. This petition has, therefore, to be dismissed.

W.P. No. 415 of 1962 :

78. The petitioner is a firm at Samaikota, doing the business of crushing bones and exporting thorn to foreign countries. The respondent sought to bring this establishment within the scope of the Act, as he felt that the firm was engaged in the manufacture of "Heavy and Fine Chemicals" including fertilizers. This view of the Provident Fund Commissioner is questioned by the petitioner on the plea that the raw bones crushed into pieces could not be used as fertilizers. The

petitioner submits that the fertilizer comprehended by the entry is "Synthetic commercial Fertilizer which comes under the genus Heavy and Fine Chemicals". It is maintained that as the bones are crushed into small pieces to facilitate packing for export to foreign countries, there was no manufacturing process involved therein and, consequently, the expression "Heavy and Fine Chemicals" including Fertilizers does not cover this industry.

79. This argument seems to be well-founded. Small pieces of bones without further process of conversion cannot be styled 'fertilizers' or used as such. These pieces of bones can be used not only for being manufactured as fertilizers but also for various purposes. They have several other industrial uses. In Encyclopaedia Britannica (Volume 3) the industrial uses of bones are enumerated. At page 844 the uses of bones are stated as follows :

"There is an application for every constituent of bones, the by-product of the meat trade, in various branches of industry. Besides the direct use of bones for such articles as buttons, knife-handles etc., there is a large range of valuable secondary products. The mineral matters - Phosphates, lime - is of value as artificial manure and as a component of porcelain; the fat is worked up by the soapmaker and chandler and the gelatinous constituents are the source of much of the glue and gelatin of commerce. Further, by dry distillation, not only bone charcoal, a valuable purifying medium, but ammonia and bone-tar are obtained."

80. As these bones are to undergo a further process before they could be used as fertilizers, the respondent conceded that, on the facts disclosed, the Act cannot be applied to this establishment and relief may be granted to the petitioner as prayed for. But if it is proved that the petitioner is engaged in the manufacture of fertilizers "with these bones, the learned counsel for the respondent submits, the department should have the liberty to extend the provisions of the Act and the scheme, and the petitioner is agreeable to this course. Meanwhile, the respondent undertakes not to enforce the provisions of the scheme as against the petitioner. Having regard to the attitude of the respondent, it is needless to issue a writ. W.P. No. 574 of 1961 :

81. The petitioner is the proprietor of Sri Ramachandra Ginning and Oil Mills. Two contentions are urged in support of this petition, namely, (i) that while the scheme came into force on 1-7-1950, the petitioner was called upon to pay contribution with effect from June, 1954; and (ii) that the business of the petitioner consists of extracting oil from groundnuts by expellers and ginning of raw cotton, the former of which alone falls under the scheme and not the latter and that if the number of workmen employed in the oil mill alone is taken into consideration, it does not fulfil the requirements of Section 1(3) of the Act and as such the Act and the scheme are inapplicable to the petitioner's establishment. So far as the first complaint is concerned, the respondent concedes that it is well founded and the petitioner is liable to make contribution only from the date the scheme came into force on 1-9-1956 and that the demand will be modified so as to conform to the date of putting into operation the scheme as regards this establishment.

82. Coming now to the second limb of the contention, we are not disposed to give effect to it. The scope of Section 1(3)(a) is not limited to factories exclusively engaged in the industries enumerated in schedule I, and the fact that a factory carries on one industry which is included in

Schedule I While the other industry does not come within this purview, does not absolve the employer from the obligations imposed by the Act.

83. This view of ours finds support in the pronouncement of the Supreme Court in *Associated industries (P) Ltd. v. R.P.F. Commissioner*¹⁶, It was laid down in that case that Section 1(3)(a) of the Act is not confined to factories exclusively engaged in any industry specified in schedule I and that the word 'factory' occurring in Section 1(3)(a) has a comprehensive meaning including premises in which any manufacturing process is being carried on as described in the definition.

84. Observed Gajendragadkar, J., (as he then was), in the course of his judgment :

"..... the factory engaged in any industry specified in schedule I does not necessarily mean a factory exclusively engaged in the particular industry specified in the said schedule. In construing the scope of Section 1(3)(a), this Court held that composite factories came within its purview and that the fact that a factory is engaged in industrial activities some of which fall under the schedule and some do not, will not take the factory out of the purview of Section 1(3)(a)."

85. The same principle was enunciated by the Supreme Court in *Regional P.F. Commissioner, Bombay, v. S.K. M. Mfg. Co*¹⁷.

86. The instant case falls within the principle enunciated in the cited cases. It is an a fortiori case in that the two sections of the business of the petitioner are not even regarded as independent industrial activities. The petitioner is, therefore, not entitled to any relief on the grounds put forward by him. W.P. No. 17 of 1963.

87. The argument addressed in support of this petition is similar to the one mentioned above. Here, the petitioner manufactures Ayurvedic Medicines, advertises them and sells them. He invites us to treat the three activities as belonging to three different departments and as such as three different establishments. This argument utterly lacks any substance and has to be rejected. Even apart from its being governed by the doctrine of AIR 1964 Supreme Court 314 at p. 316 by no stretch of Imagination could they be regarded either as composite factories or as industrial activities independent of each other. There are no merits in this petition and it has to be dismissed.

W.P. No. 878 of 1963.

88. Here, the petitioner quest lens the constitutionality of the notification dated 24-12-1960, extending the scheme to rice-milling industry. It is urged that this notification is ultra vires the Act, as the Act does not empower the Central Government to extend the provisions of the scheme to new units. The stand taken by the learned counsel for the petitioner is that a separate scheme has to be framed for every industry sought to be brought within the ambit of the Act. The answer to this argument is to be found in Sections 4 and 7. It is quite competent for the Central Government to extend the

¹⁶ AIR 1964 SC 314 at P. 316

¹⁷ AIR 1962 SC 1536

provisions of the scheme to any industry by the issue of a notification by virtue of the provisions of the Act.

89. The petition has, therefore, to be dismissed. W.P. No. 90 of 1963.

90. The argument addressed by Sri Sarathy, learned counsel for the petitioner is that the stones excavated by his clients cannot be described as lime stones within the connotation of the notification extending the provisions of the scheme to industries excavating lime stone. This contention lacks substance. The opinion of the Director of the Department of Mines and Geology shows that the type of stones in which the petitioners deal is 'lime stones' within the contemplation of the notification. We also understand that these stones are used for manufacturing lime.

91. This petition is, therefore dismissed.

92. There remain W.P. Nos. 66 of 1962, 992 of 1963 and 897 of 1962, all of which relate to motor industry. In the first of them, the business was owned by the Joint family constituted by the petitioners. There was a suit for partition, of the joint family properties including the motor vehicles, the subject-matter of the writ petitions. In the course of this litigation, it was decided by the High Court that each of the sharers should be allotted a particular number of buses. Pursuant to this order, the buses were divided, and each of them was allotted a particular number of them on 31-12-1960. Thereafter, the business of each of the brothers was managed separately. Consequently, it could not be said that these buses were under one management which could be called an establishment. Having regard to the division of these properties that took place on 31-12-1960, it is represented by the counsel for the respondents that the petitioners need pay their contribution only from 1-5-1959 when the scheme came into force to 31-12-1960, when each of the brothers came into separate possession of the buses that fell to his share. Since the respondent do not propose to extend the liability of the petitioners subsequent to 31-12-1960, we do not propose to issue a writ in regard to that relief. W.P. No. 992 of 1963.

93. The petitioner, who is the proprietor of a number of motor vehicles, made a gift of four of them to her son on 1-2-1960 and settled four buses on her daughter in April, 1960. It is urged that ever since these gifts were made, each of the donees was managing his or her vehicles and lay reason thereof the number of persons employed by the petitioner fell very much below twenty and that, consequently Section 1(3) of the Act did not apply to her. The answer to this was that it had not been established that these gifts were really intended to be operative and the management continued to be in the hands of the petitioner and that, in any event, the only remedy available to the petitioner is to take recourse to Section 1(5) of the Act. We are also told that though the petitioner was called upon to produce her accounts to substantiate her case by the department, she had not chosen to do so. This is not disputed by the learned counsel for the petitioner. But he only requests that he might be given an opportunity to prove that the gifts referred to above have resulted in the reduction of the numerical strength of the establishment and to make an application under Section 1(5). As the only question that falls to be considered is whether notice demanding payment of contribution was validly issued or not and as its legality could not be assailed, we have to dismiss the petition. This does not, however, stand in the way of her proving that subsequent to the gifts, she ceased to employ less than twenty persons and invoking Section 1(5). As no other point is raised, this petition has to be dismissed

W.P. No. 897 of 1962.

94. The only request made on behalf of the petitioner is that we should observe that in case he is able to establish before the authorities concerned that there have been three distinct and separate establishments from a particular period he may be given relief by the department. To this course, the respondent has no objection. However, as the demands for payment of contribution could not be successfully impeached, the Writ petition has to be dismissed.

95. In the result, all the Writ Petitions are dismissed except W.P. No. 415 of 1962, with half costs. Advocate's fee in each Rs. 50/- (fifty).

W.P. No. 897 of 1962.

96. As regards W.P. No. 415 of 1962, as we have already said, no writ need issue having regard to the attitude adopted by the Respondent, viz., that they would not enforce the provisions of the scheme against the petitioner reserving of course the right or the department to proceed against him in case it is established that he is engaged in the manufacture of fertilizers.

Petitions dismissed.