

CALCUTTA HIGH COURT

Jamnadas Agarwalla

Vs.

Regional Provident Fund

Civil Rule No. 3974 of 1960

(B.N. Banerjee, J.)

10.09.1962

ORDER

B.N. Banerjee, J.

1. This Rule is directed against several demands, made on the petitioners, under the Employees' Provident Fund Scheme 1952. The first demand for payment of Provident Fund Contribution and administrative charges was made on April 30, 1957, and the period covered thereby was mentioned as "with effect from the 13th February 1959". (Annexure C). The second demand was made on May 27, 1959, for the period from "February '59 to April '59" (Annexure C1.). The third demand was made on July 31, 1959, for the period from "May '59 to June '59 in addition to previous period" (Annexure C3). The fourth demand was made on February 2, 1960, for the period "July '59 to February '60 in addition to previous period" (Annexure C4). The fifth demand was made on May 13, 1960, for the period from "February '60 to March '60 in addition to previous period" (Annexure C5). The sixth demand was made on July 6, 1960, for the period from "April '60 to May '60 in addition to previous period" (Annexure C6). For non-payment of some of the demands, several certificate cases were started against petitioners, namely,

1. Certificate case No. E. P. F. 77 of 1959-60, for recovery of dues for the period from February to April 1959, amounting to Rs. 657. 15 np.

2. Certificate Case No. E. P. F. 146 of 1959-60, for recovery of dues for May and June, 1959, amounting to Rs. 463.50 np.

3. Certificate Case No. E. P. F. 315 of 1959-60, for recovery of dues for the period from July 1959 to January 1960, amounting to Rs. 1623.25 np.

4. Certificate Case No. E. P. F. 59 of 1960-61, for recovery of dues for February and March 1960, amounting to Rs. 463.50 np.

2. Also on April 30, 1960, there was started a criminal proceeding against the Manager of the petitioners, under paragraph 76 (a), (c) and (e) of the Employees' Provident Fund Scheme read with Section 14 (2) of the Employees' Provident Funds Act.

3. The petitioners disputed their liability to pay the demand on the ground that theirs was an infant industry and invoked the jurisdiction of the Central Government, under Section 19A of the Employees' Provident Funds Act, for a decision as to their non-liability to pay. The Central Government rejected the prayer.

4. It is in these circumstances that the petitioners moved this Court praying for a writ in the nature of certiorari for quashing the aforementioned demands and a Writ in the nature of prohibition restraining the respondents from further proceeding with the Certificate Cases started for realization of the same and also for consequential Writs and orders and obtained this Rule.

5. According to the case made by the petitioners, they carry on business in co-partnership under the name of International Rubber Manufacturing Company. The petitioners, in their said business, purchased from the trustees of the registered debenture trust of the United Rubber Works Private Limited, on October 18, 1958, all the machinery, plants, tools, implements, equipments, furniture and other movable articles belonging to the said limited Company, for a sum of Rs. 2,50,000/-. The business of the United Rubber Works Private Limited was closed at the time of the purchase by the petitioners and they alleged to have started, after their purchase, a new business, in the same site, on about February 13, 1959. They say that inasmuch as three years have not elapsed since the establishment of their factory, they are not liable, under the Provident Fund Scheme, to contribute.

6. In order to examine the validity of the contention made by the petitioners, it is necessary for me to examine some of the provisions of the Employees Provident Funds Act 1952 (hereinafter referred to as the Act), which was enacted, as the longer title shows to provide for the institution of provident funds for employees in factories and other establishments. Under Section 1, the provisions of the Act apply to:

"(1) * * *

(2) * * *

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

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

(4) Notwithstanding anything contained in sub-section (3) of this section or sub-section (1) of Section 16, where it appears to the Central Government, whether on an application made to it in this behalf or otherwise that the employer and the majority of employees in relation to any establishment have agreed that the provisions of this Act should be made applicable to the establishment, it may, by notification in the Official Gazette apply to the

provisions of this Act to that establishment.

(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 months 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".

7. Section 5 of the Act provides for framing of a Provident Fund Scheme and. reads as follows :

"(1) The Central Government may, by notification in the official Gazette, frame a Scheme to be called the Employee's Provident Fund Scheme for the establishment of provident funds under this Act for employees or of any class of employees and specify the establishment or class of establishment to which the said Scheme shall apply and there shall be established, as soon as may be alter the framing of the Scheme, a Fund in accordance with the provisions of this Act and the Scheme.

(2) 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".

8. Section 6 of the Act provides for contributions by employees to the Provident Fund and is in the following language :

"(1) The contribution which shall be paid by the employer to the Fund shall be sis 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 therefor, be an amount not exceeding eight and one-third per cent of his basic wages, dearness allowance and retaininig allowance, (if any);

Provided that where the amount of any contribution payable under this Act involves a fraction of a rupee, the Scheme may provide for the rounding off of such fraction to the nearest rupee, half of a rupee or quarter of a rupee.

Explanation 1 - For the purposes of this sub-section, dearness allowance shall be deemed to include also the cash value of any food concession allowed to the employee.

Explanation 2 - For the purposes of this sub-section, 'retaining allowance' means an allowance payable for the time being to an employee of any factory or other establishment during any period in which the establishment is not working, for retaining

his services.

(2) Subject to the provisions contained in sub-section (1), any Scheme may provide for all or any of the matters specified in Schedule II.

(3) Where under the provisions of any Scheme, any board of trustees is constituted for administering the Fund, such board of trustees shall be a body corporate under the name specified in the Scheme, having perpetual succession and a common seal and shall by the said name sue and be sued".

9. Section 8 of the Act provides for modes of recovery of money due from employers and is set out below :

Any amount due –

" (a) from the employer in relation to an establishment to which any scheme applies in respect of any contribution payable to the Fund damages recoverable under Section 14-B, accumulations required to be transferred under sub-section (2) of Section 15 or any charges payable by him under any other provision of this Act or of any provision of the Scheme; or

(b) from the employer in relation to an exempted establishment in respect of any damages recoverable under Section 14-B or any charges payable by him to the appropriate Government under any provision of this Act or under any of the conditions specified under Section 17;

may, if the amount is in arrear, be recovered by the appropriate Government in the same manner as an arrear of land revenue".

10. Section 14-B of the Act contains provisions for recovery of damages in the following language :

"14-B - Where an employer makes default in the payment of any contribution to the Fund or in the transfer of accumulations required to be transferred by him under sub-section (2) of Section 15 or in the payment of any charges payable under any other provisions of this Act or of any Scheme or under any of the conditions specified under Section 17, the appropriate Government may recover from the employer such damages, not exceeding twenty-five per cent of the amount of arrears as it may think fit to impose".

11. Section 16 of the Act makes an exception in favor of establishments belonging to Government or local authority in infant establishments and is set out below:

"Section 16. (1) This Act shall not apply -

(a) to any establishment registered under the Co-operative Societies Act, 1912 (2 of 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 reason of a change in its location.

(2) If the Central Government is of opinion that having regard to the financial position of any class of establishment 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."

12. The words "date on which the establishment is or has been set up" mean the date on which the factory started its manufacturing process. The fact that a new company or concern subsequently takes over or acquires the factory does not shift the date of establishment of the factory to the date of its taking over or acquisition nor does the fact matter that the factory had ceased to produce goods for a certain time before acquisition and resumed production, under a new name, as a result of the acquisition. This is the view which was expressed by Bose, J. (as the Chief Justice then was) in *Bharat Board Mills Ltd. v. Regional Provident Fund Commissioner*¹, with which I respectfully agree.

13. It does not appear from the materials on record when did the factory first start production. Therefore, the claim for exemption as made by the petition cannot be sustained.

14. The Rale is therefore, discharged. There will be no order as to costs. The Certificate Officer may now demand from Messrs. Akhil Bose and Co., Solicitors, payment of Rs. 3000/- held by it under order of this Court, dated September 13, 1960, and on such demand being made the Solicitors above named must pay the amount to the Certificate Officer.

Rule discharged.

¹61 Cal WN 694 : (AIR 1957 Cal 702)