

J and J Dechane Vs. Regional Provident Fund Commissioner and anr.

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Court : Andhra Pradesh

Decided On : Feb-16-1960

Reported in : (1960)ILLJ765AP

Judge : P. Chandra Reddi, C.J. and ; Narasimham, J.

Appellant : J and J Dechane

Respondent : Regional Provident Fund Commissioner and anr.

Judgement :

ORDER

Narasimham, J.

1. This is a petition pre-ferred under Article 226 of the Constitution for the issuance of an appropriate writ quashing the decision of the Regional Provident Fund Commissioner that the petitioner's factory known as J. & J. Dechane cornea within the purview of the Employees' Provident Funds Act, 1952 (Act XIX of 1952), and the scheme framed thereunder and also restraining the recovery of the amounts of contribution and administrative charges payable thereunder, by the Collector.

2. The petitioner is the sole proprietor of a concern engaged in the manufacture of Pharmaceuticals ran in the business name of J. & J Dechane at Troop Bazaar, Hyderabed, The said business of manufacture of the Pharmaceuticals came within the purview of the Employees' Provident Funds Act, 1952 from 30 September

1958. Thereupon, the Regional Provident Fund Commissioner issued a notice dated 18 September 1956 to the petitioner informing him that his factory fulfilled the conditions under Section 1(3) of the Employees Provident Funds Act, which will hereinafter be referred to as 'the Act,' and that he should submit returns and that remittances prescribed under the Act and the scheme thereunder. That was followed by a notice dated 17 December 1956. To that, the petitioner replied by letter dated 26 December 1956 that he did not employ 50 or more persons so as to attract the provisions of the Act and the scheme. Thereupon, the Regional Provident Fund Commissioner inspected the petitioner's factory on 8 January 1957 and petitioner was informed accordingly by the letter dated 12 January 1957. Another inspection was made on 4 July 1957 by the Inspector who also found that the petitioner employed more than 50 workers. Then, a further notice was issued to the petitioner on 27 July 1957, calling upon him to submit the necessary returns and pay the contributions and administrative charges. Thereafter, the representative of the petitioner, one Ramachander, is said to have met the Regional Provident Fund Commissioner and admitted that the petitioner's factory employed more than 50 persons and agreed to implement the provisions of the Act and the scheme. The Regional Provident Fund Commissioner again called upon the petitioner by his letter dated 6 September 1957 to comply with the provisions of the Act/and the scheme by submitting the returns and paying the contributions and administrative charges and intimated to him also that the Collector of Hyderabad had been requested to recover the contributions and administrative charges due from the petitioner from 1 October 1956 as arrears of land revenue as provided under Section 8 of the Act.

3. Thereafter, the petitioner came up with this writ petition in October 1957 invoking the jurisdiction of this Court under the Constitution, in the affidavit filed in support of the petition, the petitioner denied that he employed 50 persons or more and that his representative had any authority to represent otherwise and bind him with any such representation. The Regional Provident Fund Commissioner had not inspected his factory on 8 January 1957. While admitting that the Inspector had visited his premises on 4 July 1957, he pleaded that he had not called for the production of the relevant registers and that except for superficial oral enquiries made of two inferior servants, he did not enquire any authorized person. So, the

petitioner alleged that the enquiry was not made as indicated in Section 13(2) of the Act and that to that extent, it was a violation of the principles of natural Justice. He pleaded that he had requested for a due enquiry, but that was refused,

4. With regard to the amounts sought to be recovered, he stated that before the demand was made through the Collector, no demand was made by the Regional Commissioner himself. The demand itself was made without particulars and without giving an opportunity to the petitioner and without notice to if the petitioner and it was oppressive, and offended the principles of natural justice. The petitioner further alleged that his registers would disclose that he employed only less than 50 persons and that the Regional Provident Fund Commissioner's decision is without jurisdiction and the demand made in pursuance thereof is also without jurisdiction and that the petitioner has no other remedy except to have recourse to the present proceedings.

5. The Regional Provident Fund Commissioner filed a counter setting out the several notices issued to the petitioner and the inspections of the petitioner's factory by himself and his Inspector.

6. With reference to the inspection on 4 July 1957 it was stated that the proprietor of the factory was said to be then suffering from 'flu' and that the clerk of his office who was present showed all the registers and gave other particulars. He referred to the representation of the petitioner's representative, Ramachander and his request that the Act and the scheme may be made applicable from the date of the last inspection of the factory on the plea that the proprietor had not taken action to implement the scheme from 1 October 1956 by mistake. He also obtained full instructions with regard to the submission of the information called for. It was pleaded that the petitioner had been given sufficient opportunity to comply with the provisions of the Act and the scheme and that on account of the default of the petitioner, the contribution and administrative charges were roughly estimated on the basis that 50 persons would be eligible for membership of the fund. The allegations of the petitioner challenging the action taken by the Commissioner were denied.

7. It was pointed out specifically that Section 19A of the Act provided for a decision by the Central Government with regard to the question whether any particular establishment was a factory to which the Act applied or not and that the petitioner's present petition deserves to be dismissed in limine as he had not invoked the remedy provided under the Act.

8. It is seen that the matters for enquiry by us lie within a narrow compass. The petitioner's plea is that he has been employing less than 50 persons in the factory and that therefore, the scheme cannot be made applicable to his factory.

9. The Regional Provident Fund Commissioner and the Inspector purported to have inspected this factory on different dates and found that more than 50 persons were employed in his factory. So, they called upon the petitioner from time to time to submit his returns and pay his contributions and administrative charges as prescribed under the Act and the scheme thereunder. On account of the persistent default on the part of the petitioner, the authorities proceeded on a rough estimate of the contributions and administrative charges and adopted steps for recovery thereof.

10. The petitioner did not apply to the Central Government in regard to the matter which he is contesting; but has invoked the jurisdiction of this Court under the Constitution.

11. In support of this petition, Mr. Pinto urged his contentions thus:

12. The Regional Provident Fund Commissioner has no powers under the Act or the scheme to give a decision as to the number of employees employed in the factory when the petitioner raised a dispute in regard to the number. He is also not given power to impose contributions under the Act or the scheme. In view of the absence of such powers, the determination of the said matters, which are disputed, by the Regional Provident Fund Commissioner would be arbitrary and his acts would be an invasion of the fundamental right of the petitioner to carry on his business, recognized by Article 19(1)(g) of the Constitution.

13. Continuing this line of reasoning, Mr. Pinto further urges that the provisions of the Act in derogation of the petitioner's fundamental right have to be struck down.

14. Specific reference is made to Sections 13(2) and 19A of the Act. We shall now proceed' to examine how far these contentions are sound.

15. Before we address ourselves to the specific sections, we would briefly scan the relevant provisions.

16. Section 1(3) of the Act reads thus:

Subject to the provisions contained in Section 16, it (the Act) applies (a) to every establishment which is a factory engaged in any industry specified in Sch. I and in which fifty or more persons are employed, and....

17. Section 2(g) defines a 'factory' as meaning:

any premises, including the precincts thereof, in any part of which a manufacturing process is being carried on or is ordinarily so carried on, whether with the aid of power or without the aid of power.

18. Section 2(1) defines 'scheme' as meaning 'a scheme framed under the Act.'

19. The power to add to Sch. I referred to in Section 1(3) is conferred on the Central Government by Section 4.

20. Section 5 refers to the framing of a scheme to be called the Employees' Provident Fund Scheme for the establishment of provident funds under the Act.

21. Section 6 refers to the contributions and matters which may be provided for in the scheme.

22. Section 8 prescribes the mode of recovery of moneys due from the employers. It provides inter alia that if 'the amount is in arrear, it may be recovered by the appropriate Government in the same manner as an arrear of land revenue.'

23. Section 13 provides for the appointment of Inspectors for the purpose of the Act and the schema. Sub-section (2) thereof is expressed thus:

Any Inspector appointed under Sub-section (1) may, for the purpose of inquiring into the correctness of any information furnished in connexion with this Act or with any scheme or for the purpose of ascertaining whether any of the provisions of this Act or of any scheme have been complied with in respect of an establishment to which any scheme applies or for the purpose of ascertaining whether the provisions of this Act or any scheme are applicable to any establishment to which the scheme has not been applied for the purpose of determining whether the conditions subject to which exemption was granted under Section 17 are being complied with by the employer in relation to an exempted factory-

- (a) require an employer to furnish such information as he may consider necessary;
- (b) at any reasonable time enter any factory or any premises connected there with and require anyone found in charge thereof to produce before him for examination any account books, registers and other documents relating to the employment of persons or the payment of wages in the factory;
- (c) examine, with respect to any matter relevant to any of the purposes aforesaid, the employer, his agent or servant or any other person found in charge of the factory or any premises connected therewith or whom the Inspector has reasonable cause to believe to be, or to have been, an employee in the factory;
- (d) make copies of, take extract from, any book, register or other documents maintained in relation to the factory;
- (e) exercise such other powers as the scheme may provide.

24. Section 19A confers power upon the Central Government to remove difficulties. It is expressed thus:

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 Sch. I;

(I-a) whether any particular establishment is an establishment falling within the class of establishment to which this Act applies by virtue of a notification under Clause (b) of Sub-section (3) of S. I;

(ii) whether fifty or more persons are employed in an establishment; or

(iii) whether three years have elapsed from the establishment of an establishment ;
or

(iv) whether the total quantum, of benefits to which an employee is entitled has been reduced by the employer;

the Central Government may, by order, make such provisions or give such direction not inconsistent with the provisions of this Act, as appear to it to be necessary or expedient for the removal of the doubt or difficulty; and the order of the Central Government, in such cases, shall be final.

25. The brunt of the criticism is directed against Section 13(2) of the Act. Mr. Pinto's attack is twofold. Firstly, he submits that the said provision does not give the Inspector the power to decide when there is a dispute with regard to relevant matters. Secondly, he contends that as the section now reads, the decision of the Inspector IB going to be one-sided and that as such it IB an arbitrary exercise of the powers to the prejudice of the employer.

26. To support his contentions, he has Invited references to the comparative provisions In the Employees' State Insurance Act (Act XXXIV of 1948) and the Minimum Wages Act, 1948 (Act XI of 1948). Our attention was drawn to Sections 74 and 75 of the Employees' State Insurance Act, 1948, which provide for adjudication of disputes and claims. Similarly, he made reference to Section 20 of Minimum Wages Act, 1948, which provides for decision of claims arising out of payment less than the minimum rates of wages and other matters.

27. With reference to these specific provisions provided under the said Acts, Mr. Pinto contended that the absence of similar provisions in the Act under consideration is significant and suggests a lacuna. This is canvassed as supporting his position that there is no provision for a decision by the officers

concerned in case of dispute and so, any decision by them is unwarranted by law.

28. We are not Impressed by his arguments based on comparative study and what may be described as a process of reasoning based on other Acts.

29. We may recall the trenchant observations of the Supreme Court in the State of Madras v. V. G. Row : 1952 CriLJ966 . The Chief Justice of the Supreme Court, who spoke for the Full Bench of five Judges, has stated thus (at p. 200 of the report):

It is important in this context to bear in mind that the test of reasonableness, wherever prescribed, should be applied to each Individual statute Impugned, and no abstract standard, or general pattern of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing condition at the time, should all enter into the Judicial verdict. In evaluating such elusive factors and forming their own conception of what is reasonable, in all the circumstances of a given case, it is inevitable that the social philosophy and the scale of values of the judges participating in the decision should play an important part, and the limit to their interference with legislative judgment in such cases can only be dictated by their sense of responsibility and self-restraint and the sobering reflection that the Constitution is meant not only for people of their way of thinking but for all, and that the majority of the elected representatives of the people have, in authorizing the imposition of the restrictions, considered them to be reasonable.

30. These observations were quoted with approval by the Supreme Court again in Virendra and Anr. v. State of Punjab and Anr. 1958 S.C.J. 88, 93 (at p. 93 of the report).

31. In the light of these authoritative pronouncements, we are not persuaded that the absence of provisions found in any other enactment suggests a lacuna and that as such any measures taken to implement Act would ipso facto be unwarranted and arbitrary and constitute abridgement of the fundamental rights of employers. We see no unreasonableness in the aforesaid provision which confers

certain powers on the Inspector to implement the provisions of the Act and the scheme framed thereunder.

32. We may recall the averments in the affidavit characterizing the enquiry undertaken already as 'superficial and casual' and requesting to hold a proper enquiry and to give an opportunity to the petitioner to place the registers before the Commissioner and to make representations and alleging that such request was refused. The stand now taken by Mr. Pinto is widely divergent and is palpably inapplicable to the facts of the case.

33. We express here that we are unable to accept the allegation of the petitioner that the enquiries so far under Section 13(2) were superficial and casual and that the officers concerned have not scrutinized the registers. We are Inclined to the view that the petitioner has been non-co-operating right from the beginning and the officers had proceeded to implement the provisions of the Act and the scheme as in duty bound as far as was possible in the circumstances. Our approval of the action taken by the officers in question under Section 13(2) would not, however, preclude a further scrutiny of the relevant registers of the petitioner, if need be.

34. Mr. Pinto has also challenged the validity of Section 19A. His contention is that the provision is again abridgement of the fundamental right of a person to carry on his business. He has cited *Bharat Board Mills, Ltd. v. Regional Provident Fund Commissioner and Anr.* 1958-1 L.L.J. 285 as supporting him fully.

35. Therein a single Judge of the Calcutta High Court has expressed that Section 19A lacks the element of reasonableness and abridges and violates the fundamental right guaranteed by Article 19(1)(g) of the Constitution and as such is void under Article 13(2) of the Constitution. The reasoning in support of the conclusion is expressed thus:-

The order of the Government is made final under the provisions of this section. There is no provision for any appeal or representation by the party aggrieved by the order. The Government; is not required to disclose it a reasons for making any order. Tae matter is therefore left to the subjective satisfaction of the Government. There are no means of checking whether the order is arbitrary or mala fide or not.

Further, unless it can be established that the Government has acted outside the four corners of the statute or in excess of its jurisdiction, recourse to the Civil Court by the aggrieved party is barred inasmuch as the order of the Government is, as I have pointed out already, made conclusive by the terms of the section. There is no specific procedure laid down for making the determination. The Government may or may not give the owner of the factory an opportunity of hearing before making the order. So the party owning the factory or having interest in the factory is left entirely at the mercy of the Government. It appears to me therefore that the section lacks the element of reasonableness and abridges and violates the fundamental right guaranteed by Article 19(1)(g) of the Constitution and as such is void under Article 13(2) of the Constitution.

36. We have to notice, however, that the judgment of the learned Judge In that case went against the petitioner on the point of exemption that he had claimed, it is clear to us that these observations were not really material for the decision of that case.

37. We find, however, that this section was not struck down by Madras High Court or the Patna High Court.

38. In *Annamalai Mudaliar Bros. v. Regional Provident Fund Commissioner and Ors.* 1955-I L.L.J, 674, a learned Judge of the Madras High Court took the view that Section 19A could be invoked in cases of dispute whether the factory is one to which the Act applies, that is to say, whether it is a factory within the scope of Section 1(3) of the Act, it does not appear that the validity of the provision was challenged in any manner.

39. A Division Bench of the Patna High Court had occasion to consider the said provision in *Bankimchandra Chakravarty and Anr. v. Regional Provident Fund Commissioner and Ors.* 1958-II L.L.J. 444. The learned Judge no doubt differed as to the scope of the section. They were inclined to take the view that the question of any dispute being raised by the party concerned was foreign to the section. But no exception was taken to the validity of the provision.

40. We find, therefore, that the learned Judge of the Calcutta High Court stands alone in the view that the said provision is an abridgement of the fundamental right of a citizen.

41. Be that as it may, we are now called upon to Investigate the validity or otherwise of Section 19A In view of the submission, that Mr. Pinto has made, towards the close of his arguments that his client, the petitioner, will be invoking the provisions of Section 19A and seeking the directions of the Central Government In regard to the matters in dispute. We are, not, therefore, called upon to decide this matter and we, therefore leave it open in view of this request made by Mr. Pinto.

42. Mr. Pinto had also submitted that what all his client seeks now is an opportunity to place the relevant registers before the authorities and seek directions in the matter under the provisions of the Act. So as to enable him to seek this remedy, Mr. Pinto prays for six weeks' time during which period the recovery may be held in abeyance.

43. The learned Government Pleader has been consistently pointing out that a remedy lay under the Act itself under Section 19A. As Mr. Pinto has persuaded himself to have recourse to this remedy and as the learned Government Pleader also does not object to holding the recovery proceedings in abeyance, we are inclined to accede to his request.

44. In the result, the petitioner will have only this limited relief of suspending the recovery proceedings by 8 (eight) weeks so as to enable him to seek his remedies under the Act. In other respects, the writ petition fails and is dismissed with costs. Government Pleader's fee Rs. 160.