Provident Fund Inspector Vs. Mani (P.S.) (Formerly Lessee, Sree Krishna Talkies)

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Court : Kerala

Decided On : Jul-05-1967

Reported in : (1967)IILLJ647Ker

Judge : K. Sadasivan, J.

Appellant : Provident Fund Inspector

Respondent : Mani (P.S.) (Formerly Lessee, Sree Krishna Talkies)

Judgement :

K. Sadasivan, J.

1. These appeals are directed against the decision of the Industrial tribunal and Special First Glass Magistrate (for labour laws), Alleppey, in Calendar Cases Nos. 29, 30, 32, 51, 101, 109, 121,132 and 170 of 1965 on the file of his Court. The complainants in these oases are the Provident Fund Inspectors at Ernakulam and Alleppey (Calendar Cases Nos. 29. 30 and 32 of 1965 are by the Provident Fond Inspector, Ernakulam, and the rest by his counterpart at Alleppey) against one P.S. Mani, the lessee of Sree Krishna Talkies Alleppey, for the Infringement Of certain provisions of the Employees' Provident Funds Act, 1952, and the scheme-framed thereunder (hereinafter to be referred to as the Act and the scheme) The pattern of the complaint is the same in all the oases and the main allegations are

that the accused in his capacity as employer In respect of Sree Krishna Talkies, Alleppey, which la an establishment brought under coverage High Court, Kerala as a branch unit of Messrs. Kumaraswami Reddlar, Alleppey, engaged in purchase, storage or Bale of goods which has been brought under the purview of the Employees' Provident Funds Act, 1952, has failed to make payments to the employees' provident fund as provided by Para. 38 (1) read with Paras, 29 and 30 of the Employees' Provident Funds Scheme, 1952. He has also failed to remit the share contribution of the employees together with administrative charges for the months from

June to August 1963 (Calendar Case No. 29 of 1965),

September and October 1963 (Calendar Case No. 30 of 1965),

November 1963 (Calendar Case No. 32 of 1966),

December 1963 to February 1964 (Calendar Case No. 51 of 1965),

March and April 1964 (Calendar Case No. 101 of 1965),

May and June 1964 (Calendar Case No. 109 of 1965),

July 1964 (Calendar Case No. 121 of 1965),

September 1964 (Calendar Case No. 132 of 1965), and

October 1964 (Calendar Case No, 170 of 1955).

These contributions were payable to the employees' provident fund before 15 of the subsequent months concerned in the manner prescribed under the above paragraph of the scheme. The accused also has failed to send, to the Regional Provident Fund Commissioner, returns in form No. 5 for the period shown in the complaint. He has also failed to send, to the Regional Provident Fund Commissioner, the monthly consolidated statement showing recoveries made from the wages of each employee and the amount contributed by the employer, etc. The allegations were all denied by the accused. He stated that he has taken the theatre on lease only and the workers continued to be the workers under Messrs.

Kumaraswami Reddiar as before. He has therefore no liability to pay the provident fund contribution or administrative charges, etc. He has also stated that the workers were appointed by P.W. 2 after they were given their gratuity, etc., by Messrs. Kumaraswaml Reddlar for the period they were under bin. All the workers are thus the employees of P.W. 2 (P.W. 2 is the lessee who took the theatre on rent after the termination of the lease In favour of the accused). The learned tribunal has accepted this contention of the accused and acquitted him in all the cases.

2. For a proper appreciation of the question Involved in these oases, the relevant sections of the AOG and scheme thereunder have to be strictly and correctly understood. It la necessary to have a proper concept of the scope and extent of the liability which the Act and the scheme would cast upon the employer, and whether under any circumstance could he claim exoneration there from. Accused in the present case Is admittedly the lessee of Sree Krishna Talkies which was continued as part of the establishment known as Messrs. Kumaraswaml Reddlar. According to the proseoutlon, Sree Krishna Talkies is a unit in itself and the accused, as the employer of the workers In that unit, is liable under the Act and the scheme, and has no escape out of it. Section 2 (e)(it) of the Act describes the employer as a person who has ultimate control over the affairs of the establishment, and when the said affairs are entrusted to a manager or managing director, such manager or managing director. This definition of the employer has to be read Bide by side with Section 2 (a) of the Act which gives an elucidation of the term 'establishment.' Section 2 (a) reads:

2. (a) Establishment to include all departments and branches.-For the removal of doubts, it is hereby declared that when an establishment consists of different departments or has branches whether situate in the same place or in different places, all such departments or branches shall be treated as parts of the same establishment.

The accused's case is that notwithstanding the fact that he is the lessee, the ultimate control over Sree Krishna Talkies still rests with the lessor and therefore he is the person liable, if at all. under the Act and the scheme. In support of his contention certain provisions of the lease-deed Itself were relied on. Exhibit P. 7 is the lease-deed. Therein It Is stated that eleven employees already working in Sree Krishna Talkies would be made over to the accused and thereafter their salaries would have to be paid by him. But the accused was not given the right to discharge them from service and for that he had to obtain the written permission of Messrs. Kumaraswami Reddiar, the employer and owner of the establishment known as Messrs. Kumaraswarai Reddiar. In other words, according to the accused, he was not given full and effective control over the eleven workers allotted to Sree Krishna Talkies and that being the case It would be incorrect to say that Sree Krishna Talkies was carved out from the 'establishment' and allowed to have a separate existence of Its own. Section 2 (a) of the Act was Invoked by the appellant's learned Counsel in support of this position. But on a strict construction of the section, I fall to see how the cooption could be of help to the appellant, and what Section 2 (a) says is that when an establishment consists of different departments, all such departments shall be treated as parts of the same establishment. Applying the principle to the facts on hand, the resultant position would be that Sree Krishna Talkies Is the component part of the establishment known as Messrs. Kumaraswaml Reddlar and the duties and obligations arising under the Act and the scheme, will have to be discharged by them. From the lease-deed we have already been that full control and direction of Sree Krishna Talkies was not given over to the accused. He was given only the custody of the theatre with the duty to pay the salaries of the workers. The ultimate control like dismissal or discharge of the employees continued to be vested in Messrs. Kumaraswaml Reddiar. The establishment for the purpose of the Act and the scheme should, therefore, be the establishment known as Sree Krishna Talkies. No duty is therefore cast upon the accused to contribute to the provident fund or to pay anything by way of administrative charges, etc. Eren if Sree Krishna Talkies in treated as an establishment, that would still fall outside the purview of the Act since the workers are only eleven in number which is below the prescribed minimum. in any view of the matter, the prosecution is unsustainable and It has rightly been thrown out. The acquittal entered by the Court below in all these cases is proper and in confirmation of the order, all these appeals are dismissed.