

State of Gujarat Vs. Vijay Sewing Machine Co. and anr.

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Court : Gujarat

Decided On : Oct-30-1969

Reported in : (1970)11GLR1051

Judge : N.G. Shelat, J.

Appellant : State of Gujarat

Respondent : Vijay Sewing Machine Co. and anr.

Judgement :

N.G. Shelat, J.

1. This appeal arises out of an order passed on 7-4-69 by Mr. D.A. Chhaya, Judicial Magistrate, First Class Navasari in Summary Case No. 2469 of 1966 whereby the respondents accused Nos. 1 and 2 came to be acquitted. They also came to be acquitted in other similar Summary Cases Nos. 2470 to 2497 of 1966. The State has filed appeals in those cases and they are Criminal Appeals No. 567 to 594 of 1969 respectively.

2. The respondent-accused No. 1 is the Vijay Sewing Machine Co., Navsari, of which the accused No. 2 was a partner during the period for which the criminal cases were filed. Shri Dinkarraai Lalbhai Desai, an Inspector appointed under Section 13(1) of the Employees Provident Funds Act, 1952, hereinafter referred to as 'the Act', found that the accused had failed to pay in time the Provident Fund

contributions as required under paragraph 38(1) of the Employees Provident Funds Scheme, 1952, hereinafter referred to as 'the Scheme', during the period from 1-12-60 to 31-5-64. The accused were liable to pay the same within fifteen days of the close of the respective months in the manner so specified in Paragraph 38 of the Scheme. The accused were given an opportunity to comply with the provisions of the Act and the Scheme, and since they failed to do so, after obtaining the necessary sanction from the Education and Labour Department of the Government of Gujarat, the cases were filed in the Court of the learned Magistrate. In each case the failure to pay the amount is taken for a period of three months. Both the accused are thus sought to be punished under paragraph 76(a) read with paragraph 38(1) of the Employees' Provident Funds Scheme, 1952 and Sections 14 and 14A of the Employees Provident Funds Act, 1952. The accused denied to have committed any offence. The learned Magistrate after considering the effect of the evidence adduced in the case found that the Act was made applicable to the company in the year 1964, and, therefore, contributions cannot be claimed from the company during the period prior to the same. So far as accused No. 2 is concerned in each of these cases, he found that the alleged offences appear to have been committed without his knowledge and, therefore, he was entitled to the benefit of the proviso under Section 14A(1) of the Employees' Provident Funds Act, 1952. In the result, he acquitted them in all the cases. It is against that order of acquittal that the State has come in appeal in all cases.

3. All these appeals are consolidated and have been heard together and a common judgment is recorded.

4. The contention made out by the learned Govt. Pleader appearing for the State-appellant is that the Act and the Scheme apply from the date they are notified, and they became effective against any such company or factory provided it falls within the ambit of the provisions contained in Section 1(3)(a) of the Act. The letter Ex. 13, relied upon by the learned Magistrate for saying that the Commissioner applied the Act and the Scheme from the date it reached the accused, is erroneous and in fact it does not say so at all. It may be stated here, however, that the learned Govt. Pleader does not press the appeals so far as accused No. 2 in all the cases is concerned and that part of the order of acquittal shall, therefore, stand. The short

question, therefore, to be determined in all these appeals is one and that is whether the provisions of the Act and the Scheme are effective from the day they were notified against the company, and if so, was bound to comply with the same and failure whereof is made punishable under the Act. In order that the Act and the Scheme applied, all that is necessary is that the company must fall within the ambit of Section 1(3)(a) of the Act. This Act came to be notified giving effect thereto on 4-3-1952. The Scheme was framed under the powers given under Section 5 of the Act and it is called The Employees Provident Funds Scheme 1952. It was introduced with effect from 3-9-52. Now Section 1(3)(a) of the Act Provides:

1(3) Subject to the provisions contained in Section 16, it applies--

(a) to every establishment which is factory engaged in any industry specified in Schedule 1 and in which twenty or more persons are employed.

Thus before the Act and the Scheme can apply to any such factory or the company as it is called, it's working must fall in industry referred to in Schedule I, and that persons working therein were twenty or more. This latter condition is substituted by fifty persons or more working in any such industry by Section 2 of the Act 46 of 1960 with effect from 31-12-60. We have, therefore to read 'fifty' in place of 'twenty' in Section 1(3)(a) of the Act.

5. It is not in dispute that the company was carrying on an industry specified in Schedule 1 and that there were actually fifty persons working in that factory on 31-12-60. An attempt was made to suggest by reference to the muster-roll and pay registers that though there were fifty persons at that point of time, later on they were less than that number. That no doubt appears to be so. But that does not help the company for as provided in Sub-section (5) of Section 1 of the Act, it continues to be governed under the Act notwithstanding any such number is reduced subject to the proviso which undisputedly is not availed of. At no time any such intimation was sent to the authority as required under the proviso to Sub-section (5) of Section 1 of the Act. That plea has, therefore, no substance, and in fact it was not raised in the trial Court as well. The accused No. 1 was thus bound to contribute to the Provident fund of its employees and it has not contributed the

same as required under the Act and in a manner laid down in the Scheme framed thereunder. The trial Court, however, has proceeded on the basis that it was decided by the Commissioner in July 1964 that the Act would apply to this company on the basis of an admission made by the complainant and since that was said as per a letter Ex. 13 produced in Criminal Case No. 2469 of 1966, we have to consider the effect of that letter. Mr. Shah urged that there was a dispute as to the applicability of the Act to the company and that was decided by the authority and since the company was instructed about it on 24-6-64, it can be made liable from that date only and not for a period prior to that date. In support thereof, he first referred to a decision of this Court in Criminal Appeal No. 343 of 1968 decided by V.R. Shah J. on 8-10-68 wherein on that basis the acquittal of the accused in a similar case against this company was upheld. In that case the Court went on the admission of the Inspector and that letter was not considered at all. The last four lines of the judgment further show that the appeal by the State was not pressed and in those circumstances that question was not considered and no judgment appears to have been based on a reading of that letter or as to what effect it can have in law. That part of the judgment runs thus:

After some discussion with the Inspector, the complainant, Mr. Nanavati told me that in the circumstances, he would not press for a decision on this appeal. The result, therefore, is that this appeal is dismissed.

It is clear therefore that the decision does not lay down any principle or any interpretation of the section or of any letter now referred to before us. It is a decision which, therefore, governs that case alone and has no binding effect to the cases now before us.

6. He then tried to seek support from Section 19A of the Act for saying that there was a dispute between parties as to whether the factory run by this company falls within an industry specified in Schedule I and that the letter received by it from the Commissioner is an order as it were of the Central Government. It should, therefore, be held that the provisions of the Act and the Scheme came to be applied from the date he received a decision from the Commissioner under the Act on 24-6-64 and cannot be made liable for a period from 1-12-60 to 31-12-64 as

claimed from the company. Now before we go to Section 19A, on a plain perusal of the letter, it appears abundantly clear that the Act and the Scheme are stated to have come in operation against this company with effect from 1-12-60. It was on that basis that the claim was made for a period from 1-12-60 to 31-6-64. The mere fact that some correspondence went on or that there arose some dispute as to whether such a company was falling within the ambit of Section 1(3)(a) of the Act cannot entitle much less justify the accused to say that the Act and the Scheme would come in effect from the date when such a letter was received from the Commissioner. Mr. Shah then urged that it is only from this date that the liability would arise and that it should not be given any retrospective operation against this company. According to him, at no time any such demand was made before. He sought support from the decision in the case of K.R. Subbaio v. The Regional Provident Fund Commissioner Madras reported in : (1963)ILLJ23Mad , where it was held as under:

The gist of the provisions of the Act relating to payment of contribution towards provident fund by the employer, is such as to make them operative only from the point of time when the authorities hold that a particular suit is within the ambit of the Act and make a consequential demand in terms of the Act and the scheme framed under it. A demand for a back period is not merely illogical and oppressive but plainly inconsistent with the terms of the enactments which are manifestly prospective in their operation.

Now Section 19A of the Act runs thus:

19A. 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 1;
- (ii) whether any particular establishment is an establishment falling within the class 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 by 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 of the doubt or difficulty; and the order of the Central Government, in such cases, shall be final.

Apart from authority and even on assumption that there existed any doubt as to whether the factory was engaged in any industry specified in Schedule I, all that this provision says is that the Central Government shall pass an order in that regard and it shall be final. It is nowhere said that the Act and the Scheme would apply from the date of any such order. At best, till dispute or doubt is resolved, the authority may stop its hands to take action for any such default, but it cannot take away its right to enforce it from the day the provisions applied to the company. If that were to be so as urged by Mr. Shah, such establishment would raise dispute and prevent the authority from enforcing the provisions of the Act and would only pay after that doubt or dispute is resolved. That cannot be so and it is not at all so contemplated. In fact as I have said above, the latter is clear to say that it has to contribute with effect from 1-12-60 to 31-5-64. That letter was an intimation to comply with the provisions of the Act.

7. As to the decision relied upon by Mr. Shah, it was pointed out by Mr. Desai, the learned Government Pleader, that this very matter was taken in Letters Patent Appeal and that decision has come to be overruled, by referring to the decision reported in (1966) 2 Labour Law Journal 676. The Division Bench of Madras High Court held that there is considerable force in the contrary view which holds that the main purport of the Act and the scheme framed thereunder is to bring into existence a compulsory provident fund applicable to all industries to which the Act applies from the date when the scheme has been declared to them. The principal

duty is laid upon the employer to put the scheme into operation forthwith and to make contributions of both the employer's and the employees' share to the fund then and there and deduct the latter share from the salary of the employees. Then they have observed thus:

In Clause 26 the words used are that every employee shall be entitled to and required to become a member of the fund. The word 'required' implies an obligation and the employer is bound to pay the contribution (both the employer's and the employees' from the date of the scheme coming into force without allowing any interval to lapse either for the awaiting of a notice of demand or for clearing a point of doubt by the Central Government under Section 19A.

Later on it has been observed as under:

In view of the obligatory nature of the provisions of the Employees' Provident Funds Act and the scheme framed thereunder, giving no choice to the employer to postpone the application of its provisions, the use of the word 'required' in Clause 26 of the scheme has to be given a mandatory and not a directory meaning and that it implies an obligation whose effect is that every employee who is not exempted and who satisfied the required qualification of service, automatically becomes a member of the fund from the date of the coming into force of the scheme. Nor does the argument of hardship or injustice on which stress was laid by Mukharji, J., in the Calcutta case as well as Jagadisan, J., can have much substance after the amendment which is incorporated in Section 7A into the Act in 1963.

Apart from this, we were referred to some other decisions of different High Courts having taken similar view on this point. The first is the decision in the case of Kunhipaly v. Regional Provident Fund, Commissioner, Trivandrum and Ors. (1966) 1 Labour Law Journal 642, where a contention that the Act and the scheme became 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 came to be negatived and it was held that the Act comes into operation by its own vigour. It applies if the conditions stated in the Act are satisfied. The next case referred to by him was of Nazeena Traders (P) Ltd. v.

Regional Provident Fund Commissioner Hyderabad and Ors. : AIR 1965 AP200 , where a similar view was taken. It has been observed therein as follows:

The liability to contribute to the provident fund is created the moment the scheme is applied to a particular establishment. It does not demand upon the vigilance of the Provident Fund Department and the issue of notice. 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 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.

The next decision referred to by him was in the case of Mohammad Osman Ali v. Patel (CM.) and Anr. (1966) 1 Labour Law Journal 833. The same view was taken in that case and later it has been observed that the contribution has to be made whether or not a demand is made for payment and the liability comes into being on the date on which there is at least one member entitled to or could be required to become a member under Para. 26. The last decision referred to by him was in the case of The Nagpur Glass Works Ltd., Nagpur City v. The Regional Provident Fund Commissioner, and Ors. A.I.R. 1961 Bombay 157, There a similar contention was raised as done in this case and it came to be negatived by the Division Bench of the Bombay High Court. While dealing with Section 19-A, it has been observed that 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. Then they have observed, 'In our view, the decision of the Madras High Court is not correct if it is intended to apply to the first clause, namely with regard to the 'difficulty in giving effect to the Act'.' It appears, therefore, clear that even if any such difficulty had arisen as a result of which any correspondence did take place, that would not come in the way giving effect to the Act and the Scheme already brought into operation. The Act and the Scheme come in effect by its own vigour and cannot stand delayed till such time

that any such doubt or difficulty contemplated in Section 19A of the Act is resolved. It is thus clear that the Act and the Scheme become effective from the date they are notified and the obligation of any such employer company arises with effect from that date provided the company or factory as the case may be, falls within the ambit of Section 1(3)(a) of the Act. There can be no question of any retrospective operation as is sought to be made out by Mr. Shah in the case.

9. There is no other point urged before us and thus the company-accused No. 1 is obviously liable for contravention of the provisions contained in the Act and the Scheme referred to hereabove. The learned Magistrate was therefore wrong in acquitting accused No. 1 and that part of the order is thus liable to be set aside. The company-accused No. 1 can be made liable for any such offence committed as contemplated in Para 76(a) and (e) of the Scheme, under Section 14A of the Act. I hold it guilty and convict it for the same accordingly.

The company is already dissolved and a Court Receiver is appointed. The Receiver has also paid up the amounts required to be paid under the Act and the Scheme. The delay had its basis mainly as no demand was made prior to 1964, and in those circumstances a nominal fine should meet the requirements of justice.

10. All the appeals are allowed against accused No. 1 the Company and the orders of its acquittal are set aside. It is convicted and directed to pay a fine of Rs. 5/- in each of the cases for an offence under Para 76(a) and (e) of the Scheme read with Section 14A of the Act. All the appeals, in so far as they relate to the order of acquittal of accused No. 2, are dismissed.