

CIVIL WRIT

Before Bhandari, C. J. and Dulat, J.

GOLDEN SILK MILLS,—Petitioner.

versus

THE CENTRAL PROVIDENT FUND COMMISSIONER
AND THE REGIONAL PROVIDENT FUND COMMISSIONER, PUNJAB,—Respondents.

Civil Writ No. 291 of 1955.

1958

April, 25th

Employees Provident Funds Act (XIX of 1952)—Sections 1 and 16—Intention of the Act—Liability to contribute to the Fund—Essentials of—Time for the determination of—Whether the date on which the Act came into force—Factory employing fifty or more persons at the commencement of the Act—Subsequent reduction in the number of employees to below fifty—Whether affects liability—Section 19A—Determination by the Central Government—Whether final.

Held, that the intention of the Employees Provident Funds Act, 1952, is not to burden small factories employing less than fifty persons or new establishments that have not been in existence for at least three years, with liabilities imposed by the Act. The liability under the Act is of an employer and is limited to the employer of fifty or more persons in a factory engaged in a scheduled industry.

Held further, that the date for determining the liability of an employer to contribute to the Employees Provident Fund is not the date of the commencement of the Act but the date when he employs fifty or more persons. If a factory which at the time of the commencement of the Act on 1st November, 1952, had in its employment fifty or more persons and was thus covered by the Act, reduces the number of its employees to below fifty at any time, thereafter, it will cease to be covered by the Act from the date of such reduction. The liability ceases as soon as a factory falls out of the category of factories employing fifty or more persons for the ordinary rule is that as soon as conditions for the application of a statute cease to exist, the statute itself ceases to apply.

Held, that if the decision made by the Central Government under section 19-A of the Act is found by the High Court to be inconsistent with the provisions of the Act, the decision cannot stand merely because section 19A of the Act makes such a decision final.

State v. Hathiwala Textile Mills and others, (1), dissented from.

Petition under Article 226 of the Constitution of India, praying that a writ in the nature of Mandamus be issued directing the respondents not to enforce the Employees Provident Fund Act, 1952, and the Scheme framed thereunder against the Petitioner Mill.

BHAGIRATH DASS, for Petitioner.

S. M. SIKRI, Advocate-General, for Respondent.

ORDER

DULAT, J.—In these petitions (Civil Writ Nos. 291 of 1955, 383 of 1955, 534 of 1956, 535 of 1956, 579 of 1956, 603 of 1956 and 32 of 1957) under Article 226 of the Constitution, the petitioners claimed that they are not liable to contribute to the Employees' Provident Fund set up under the Employees' Provident Funds Act, 1952, because the factories belonging to the petitioners do not employ fifty or more persons and the Act in question is, therefore, not applicable to them. The respondents, being the Central Provident Fund Commissioner and the Regional Provident Fund Commissioner, maintain that the petitioners' factories are still within the mischief of the Act even though, at present, less than fifty men are employed in each of those factories. The facts in these several cases are not identical, but they ultimately raise the same question of interpretation and for the sake of convenience, therefore, I propose to mention the facts concerning one of the petitions first,

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namely, *Golden Silk Mills v. The Central Provident Fund Commissioner* (C.W. 291 of 1955), and to consider the arguments on the question of law and then to determine whether, on a proper view of the law, the facts of the other cases put them outside the Act.

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The Employees' Provident Funds Act (Act XIX of 1952) came into force on the 1st November, 1952. At that time the Golden Silk Mills as such was not in existence and instead there was a factory carrying on business in the name of Golden Textile Mills. This factory was owned by three persons—Ram Lal, Kanahya Lal and Muni Lal—each of them having one-third share. Further, at that time the Golden Textile Mills, as it existed, did employ fifty or more than fifty persons. On the 10th October, 1953, however, the three partners owning the factory decided to dissolve the partnership and accounts were gone into and a deed of dissolution was executed. According to this arrangement, Muni Lal entirely severed his connection with the Golden Textile Mills and having obtained his share of the assets of the concern, including one-third of the looms, he started the present factory in the name of the Golden Silk Mills. The looms that fell to the share of Muni Lal petitioner were separated from the other looms by erecting a wall in the old factory, and the petitioner actually got his premises registered as a separate factory. The petitioner has since the date of dissolution been running his separate looms and his factory is since then employing only 16 to 18 persons. His claim is that his factory, i.e., the Golden Silk Mills, does not employ fifty or more persons and he therefore cannot be compelled to contribute to the Employees' Provident Fund.

None of the facts is disputed. It is not denied that the dissolution of partnership made on the 10th October, 1953, was genuine, and there is no suggestion that that transaction or any other transaction connected with this case was only a device, and the case has thus been argued on the assumption that the facts are as stated by the petitioners. The position is the same regarding other connected cases, so that the ground is clear for the legal controversy between the parties.

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One matter which was raised at one stage of the arguments but which was ultimately not pressed for reasons which will presently appear, concerned the validity of section 19A of the Employees' Provident Funds Act, 1952. The section says:

"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 I ;
- (i-A) 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 subsection (3) of section 1 ;
- (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

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(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 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.*"

Mr. Sikri relied on this provision, because in the present cases a reference was at one stage made to the Central Government and a direction has admittedly been received that in spite of the facts stated by the petitioners the Act in question still applies to these various factories, and the submission made therefore was that these directions, or findings by the Central Government are final. Mr. Sikri, however, admitted that the decision of the Central Government in this respect does not rest on any view of the facts different from what has been stated by the petitioners, but rests solely on their interpretation of the Act, or in other words that the conclusion of the Central Government is a conclusion of law based on their interpretation of the provisions of the Act. Further, Mr. Sikri conceded that in case this Court finds that the interpretation of the Act adopted by the Central Government is erroneous, the decision must be reversed and that the finality, which section 19A of the Act attaches to Government decisions, does not debar this Court from considering whether the Government's view of the law is or is not sound. To put it in another way, the position is that if the decision made by the Central Government is found by this Court to be inconsistent with

the provisions of the Act, the decision cannot stand merely because section 19A of the Act makes such a decision final.

In reply to Mr. Sikri's submission, it was contended by Mr. Bhagirath Dass for the petitioners that section 19A is itself invalid, being inconsistent with certain provisions of our Constitution, but he did not press that matter much further in view of Mr. Sikri's admission that it is open to us now to consider whether the conclusion of the Central Government is or is not in conformity with the provisions of the Act. It is, in the circumstances, unnecessary for us in these cases to pronounce on the constitutional validity of section 19A of the Act.

The main question then is whether the Golden Silk Mills, employing no more than 16 to 18 persons in the factory since the 10th of October, 1953, is still covered by the Act. Mr. Sikri's contention is that it is, because on the date the Act came into force the old factory called the Golden Textile Mills was employing more than fifty persons. To appreciate the argument it is necessary to consider some of the provisions of the Act of 1952. Section 1 of the Act is in these terms:—

- “1. (1) This Act may be called the Employees' Provident Fund Act, 1952.
- “(2) It extends to the whole of India except the State of Jammu and Kashmir.
- (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 fifty or more persons are employed and

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(b) to any other establishment employing fifty 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 establishments employing such number of persons less than fifty as may be specified in the notification.

(4) Notwithstanding anything contained in subsection (3) of this section or subsection (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 the provisions of this Act to that establishment."

Section 16 referred to in the above section is as follows:—

"16(1) This Act shall not apply to—

(a) any establishment belonging to the Government or a local authority,
and

(b) any other establishment, established whether before or after the commencement of this Act, unless three years have elapsed from its establishment.

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Explanation.—For the removal of doubts, it is hereby declared that the date of the establishment of an establishment shall not be deemed to have been changed merely by reason of a change of the premises of the establishment.

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

It would appear on a reading of these two provisions that Parliament's intention was that initially the Act will not be applied to small establishments employing less than fifty persons or to new establishments that had not been in existence for at least three years, although, of course, provision was made in certain circumstances and in certain conditions to extend the application of the Act even to small or new establishments. It is argued, however, that the smallness of an establishment is to be judged with reference to its size at the time the Act came into force or in other words that if a question arises whether a particular

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establishment does not employ fifty or more persons, attention is to be directed to the number of persons employed on the date of the Act, i.e., the 1st November, 1952, and any subsequent reduction in number is of no avail. The argument comes to this that if on the 1st November, 1952, a factory employed fifty persons but shortly afterwards found it impossible to employ as many and was forced to reduce its size and thus employed only ten persons it would still be covered by the Act.

I am unable to agree that such was Parliament's intention. Reliance was placed for the respondents on a decision of the Bombay High Court in *The State v. Hathiwala Textile Mills and others* (1), where the view taken was that once The Employees' Provident Funds Act, 1952, applies to a particular factory it continues to apply even if the number of persons employed in the factory falls below fifty, the main argument employed being that there is in the Act itself no specific provision for the discontinuance of the Act. It is not my impression, however, that statutes contain such specific provisions, and the ordinary rule is that as soon as conditions for the application of a statute cease to exist the statute itself ceases to apply. There are obvious difficulties in adopting the view that the number of persons employed is with reference to the date of the Act for, if that be so, then the Act would not apply to factories employing less than fifty persons on the 1st November, 1952, which might later become prosperous enough to employ many more persons and also perhaps the Act would not apply at all to factories coming into existence after the 1st November, 1952. With great respect to the

learned Judges, who decided *The State v. Hathi-wala Textile Mills and others* (1), it seems to me that the purpose behind the distinction made by Parliament between factories employing fifty or more persons and those employing a smaller number has more significance than has been attached to it, and as I read the Act the intention is not to burden small factories employing less than fifty persons with liabilities imposed by the Act. It follows that the liability would cease as soon as a factory falls out of the category of factories employing fifty or more persons. It is admitted, of course, that the petitioner's factory is engaged in a scheduled industry, but since it is admittedly not employing anything like fifty persons it is, in my opinion, not within the mischief of the Act.

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Mr. Sikri in this connection drew our attention to the definition of a "factory" contained in section 2 of the Act 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", and contended that since the premises have not changed and only a wall has been built to separate the looms falling to the petitioner's share from the remaining looms, it should be held that the petitioner's factory is still the old factory. This seems to be a very artificial way of looking at the facts. Mr. Sikri does not suggest that there has been no real separation among the old partners, nor that anybody but the present petitioner has anything to do with the factory now owned by the petitioner, and that being so, it is difficult to understand how the petitioner's present factory can be confused with the old factory which at one time employed fifty or more persons. It is, on the other hand, clear that

(1) A.I.R. 1957 Bom. 209.

Golden Silk Mills since the 10th October, 1953, there have existed
 v. two factories, and one of them belonging to the
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 Provident Fund The liability under the Act is of an employer and
 Commissioner and the Regional is limited to the employer of fifty or more persons
 Provident Fund in a factory engaged in a scheduled industry. On
 Commissioner, the facts of the present case it seems to me impos-
 Punjab sible to say that the petitioner is in any manner
 connected with a factory employing fifty or more
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Several decisions were, in the course of argu-
 ments, mentioned by Mr. Bhagirath Dass, but
 those touched on side issues which it seems to me
 unnecessary to consider. The question involved
 is short. The petitioner owns a factory which has
 not since the 10th October, 1953, employed fifty
 or more persons, and on the view of the Act
 taken by me this factory styled 'Golden Silk
 Mills' is not hit by the provisions of the Em-
 ployees' Provident Funds Act, 1952. The peti-
 tioner's claim must, therefore, be allowed.

In Civil Writ No. 579 of 1956 (*Shri Ram Lal v. The Regional Provident Fund Commissioner and another*), the facts are connected with the pre-
 vious case. When the original partnership owning
 The Golden Textile Mills was dissolved on the 10th
 October, 1953, and Muni Lal entirely separated
 from the concern, the other two partners, namely,
 Ram Lal and Kanahaya Lal continued the business
 under the name of the Golden Textile Mills. In
 March, 1954, however, a suit was brought for the
 dissolution of that partnership also, and a decree
 for dissolution was granted by Court on the 22nd
 April, 1954. The assets of the partnership were
 then divided. Seven powerlooms fell to the share
 of Ram Lal, who started a concern of his own under
 the style 'Ravinder Weaving Mills.' This was

in the end of April, 1954, and since then Ram Lal or the Ravinder Weaving Mills has never employed more than 16 to 17 persons in the factory. Again, it is not suggested that the dissolution between Ram Lal and Kanahaya Lal was not genuine. Ram Lal's claim on behalf of Ravinder Weaving Mills, therefore, is that his factory has never employed fifty or more persons and since the 22nd April, 1954, his factory, which is separately registered and which was started with the sanction of the Textile Commissioner, is not hit by the Employees' Provident Funds Act. There being no suspicion as to the genuineness of the facts alleged, the petitioner's claim must be allowed on the view adopted in the previous case that a factory employing less than fifty persons is not covered by the Act. The petition must in this case also succeed.

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In Civil Writ No. 383 of 1955 (*Radhe Sham v. The Regional Provident Fund Commissioner*) the facts are these:— A textile manufacturing business was originally started in September, 1951, and owned by six persons in partnership, namely, Gian Chand, Siri Gopal, Bal Kishan, Yash Pal, Mohan Lal and Radhe Sham. This concern suffered losses for three or four years and on the 18th March, 1954, therefore, the partnership was dissolved by a deed registered on the 22nd April, 1954. It is admitted that previously the factory was employing more than fifty persons and a provident fund for the employees was actually in existence, but on dissolution the employees were allowed to withdraw their respective contributions. In September, 1954, Radhe Sham put up a shed and installed under it six powerlooms, which had fallen to his share, and thus started a factory. In this factory at no time more than twenty persons

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have been employed. The factory as such has been separately registered and has been recognised by the Central Excise Department. The respondent's claim is that in spite of the dissolution of the old concern and in spite of the fact that the petitioner's factory at present does not employ fifty or more persons, the factory is still covered by the Act. This view is not, in my opinion, tenable for the reasons stated already, and I must therefore hold that as from September, 1954, the petitioner's factory is not liable to contribute to the Employees' Provident Fund, and the present petition must therefore be allowed.

The facts concerning Civil Writ No. 534 of 1956 (*Messrs Ishwar Textile Mills v. The Regional Provident Fund Commissioner and another*) and Civil Writ No. 535 of 1956 (*Messrs Vijay Woolen and Silk Mills, v. The Regional Provident Fund Commissioner and other*) are interconnected. A textile manufacturing factory called the E. P. Textile Mills was in existence prior to June, 1954, and it was owned and run by two partners—Shri Kali Charan and Shri Raj Kumar—having one-half share each. On the 6th June, 1954, the partnership was dissolved and each partner received his share of the assets. It appears that 14 powerlooms fell to the share of Raj Kumar and 14 looms to the share of Kali Charan. Raj Kumar sold his 14 looms to three persons—Ishar Dass Khanna, Diwan Chand Khanna and Om Parkash Khanna—and these three persons started a factory with these 14 looms which is called the Ishwar Textile Mills. This factory has never employed more than twenty persons and it is, therefore, claimed in Civil Writ No. 534 of 1956 that the factory is not covered by the Act.

Kali Charan leased his 14 powerlooms to three other persons—Shiv Parkash, Kewal Krishan and Shiv Nath—and those three persons started a textile manufacturing concern called Vijay Woollen and Silk Mills. They have never in their factory employed fifty or more persons. It is not suggested in either of these cases that the dissolution of the original partnership or the formation of the new concerns or the sale or the lease of the powerlooms were not genuine transactions, and the question therefore, merely is whether these two factories now employing since June, 1954, less than fifty persons can be covered by the Act. The answer, in my opinion, must be in the negative and the petitions (Civil Writs Nos. 534 and 535 of 1956) in these two cases also must be allowed.

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In Civil Writ No. 603 of 1956 (*Messrs Gujjar Singh and Sons v. The Regional Provident Fund Commissioner and another*) the facts are these: Gujjar Singh and two other partners—Sadhu Singh and Shankar Singh—were carrying on a business for the manufacture of agricultural implements. It was called Messrs Gujjar Singh Sadhu Singh and Brothers. This partnership was dissolved on the 1st April, 1954, and Gujjar Singh got one-third share of the machinery and other assets, On the 10th April, 1954, Gujjar Singh joined with him four other persons—Kishan Singh, Rattan Singh, Piara Singh and Ajit Singh—and started with his share of the machinery a new concern called Messrs Gujjar Singh and Sons. This factory has never employed more than forty employees. It has been registered separately under the Factories Act. The really important fact is that since the 10th April, 1954, this factory—whether it be called a new factory or an old factory—has not employed fifty or more persons, and it is, therefore, not possible to say that after the 10th April, 1954, the

Golden Silk Mills factory continues to be covered by the Act. That
 v. is the claim of the petitioner and it must, in my
 The Central opinion, be allowed.
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The last case is Civil Writ No. 32 of 1957 (*Shri Moti Sagar v. The Regional Provident Fund Commissioner and another*). In this case also a previous concern, manufacturing textiles, was in existence and was called the Keshav Silk Mills and it employed nearly 180 workmen, having started work in February, 1950. Moti Sagar was one of the partners owning this concern and there were two more—Madan Chand Kapur and Sat Pal Kapur. On the 1st May, 1955, this concern was dissolved and the partnership assets were distributed. The machinery happened to be allotted to Madan Chand Kapur and Sat Pal Kapur, while Moti Sagar got his share in other form. On the 13th July, 1955, Moti Sagar hired one of the sheds in the old factory and he there set up four powerlooms and thus started a factory which is called G. M. Textile Mills. It has of course been registered as a factory since then. This factory has never employed more than twenty persons and the claim, therefore, is that since the 13th July 1955, the petitioner's factory is not liable to contribute to the Employee's Provident Fund. This claim, in my opinion, must succeed.

The result, is that I would allow the petitions (Civil Writs Nos. 291 of 1955, 383 of 1955, 534 of 1956, 535 of 1956, 579 of 1956, 603 of 1956 and 32 of 1957) and make the rule in each case, absolute, but in the circumstances of these cases leave the parties to their own costs.

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Bhandari, C.J. I agree.

K.S.K.