

A

## R. RAMAKRISHNA RAO

v.

### STATE OF KERALA

January 23, 1968

B

[M. HIDAYATULLAH AND K. S. HEGDE, JJ.]

*Employees Provident Funds Act (19 of 1952), s. 1(3)(b) and s. 16(1)(b)—Proprietor of hotel starting new hotel—Number of employees reaching twenty—Whether employer can claim exemption from application of Act for 5 years:*

C

The appellant started running a hotel in 1948. In 1949 he started a second hotel and in 1959 a third in the same place. On the addition of the 3rd hotel the number of employees reached the figure 20.

On the question whether, even if the three hotels were taken together as one establishment, the proprietor could not claim under s. 16(1)(b) of the Employees Provident Funds Act, 1952, exemption from the application of the provisions of the Act for a period of five years from 1959.

D

HELD: The period should be counted only from 1948, when the establishment was first set up.

E

Under s. 1(3)(b) the Act applies to establishments employing 20 or more persons. The word 'employing' only describes the establishments to which the Act applies and does not show that there should be continuity of employment of 20 persons for 5 years. Under s. 16(1)(b), in the case of a new establishment, the period of 5 years is counted forward from the date the establishment is set up but in the case of an existing establishment from the date the establishment has been set up. The intention in either case is to give a breathing time to new establishments. [822 C, D, E-F]

CRIMINAL APPELLATE JURISDICTION: Criminal Appeals Nos. 94 of 1965.

F

Appeals by special leave from the judgment and order dated January 11, 1965 of the Kerala High Court in Criminal Revision Petition No. 90, 107 and 108 of 1964.

*B. R. L. Iyengar* and *A. G. Ratnaparkhi*, for the appellant (in all the appeals)

*R. H. Dhebar*, for the respondent (in all the appeals).

G

The Judgment of the Court was delivered by

H

**Hidayatullah, J.** The appellant is the proprietor of two establishments called Ananda Bhavan Boarding & Lodging and Hotel Brinda Palghat. He was convicted by the Special 1st Class Magistrate, Kozhikode on three counts under paragraphs 76(c) and (e) of the Employees Provident Fund Scheme 1952 read with s. 14 of the Employees Provident Funds Act, 1952 for having failed to submit the returns, statements and other documents required by the Scheme in respect of three quarters July to

September, 1961, October to December, 1961 and January to March, 1962. He was fined Rs. 25 on each count. His application for revision in the High Court of Kerala was dismissed. He has now filed these appeals by special leave of this Court.

Ananda Bhavan Boarding & Lodging was started by him on December 6, 1949 and Hotel Brinda on January 15, 1959. He had a third establishment which went under the name of Anand Bhavan started on September 15, 1948 but it was sold by him in April, 1962. Complaints were filed against him by the Provident Fund Inspector, Trichur on December 16, 1962, alleging that he had contravened paragraphs 36(2)(a) and (b) and 38 of the Scheme. Under these provisions he was required to submit within 15 days of the close of the month a return of the employees qualified to become members of the Fund for the first time during the preceeding month together with a declaration of such qualifying employees and to pay to each member his wages in respect of any period or part of the period for which contributions were payable after deducting the employees' contribution from his wages which together with his own contribution as well as an administrative charge were to be paid to a Fund established under the Scheme. He was also required to forward to the Commissioner within 15 days of the close of the month a consolidated statement. The appellant contended that two employees were working in the Ananda Bhavan Lodging and 11 members in the Hotel Brinda. He claimed exemption for five years under the Act. His further defence was that the three establishments formed different units and that 20 persons were not employed in any one of these places and that even if the three establishments could be deemed to be a single establishment the number of employees reached the figure (which the Act puts down as the minimum) after Hotel Brinda was opened in January 1959 and he was entitled to an exemption under the Act for a further period of five years from January 15, 1959. Lastly, he pleaded that if there was a doubt on all these points the matter could only be decided after the doubt was cleared by an order of the Central Government under s. 19A of the Act. His pleas were not accepted by the High Court and the Magistrate and he has raised some of the contentions before us.

Before we consider the arguments which have been urged before us we may refer to some of the provisions of the Act. The Employees Provident Fund Act became law on March 4, 1952 and the scheme was published on September 2, 1952. A part of the Scheme became operative from October 31, 1953; other portions came into operation on subsequent dates. It was not contended before us that the relevant parts of the Scheme were not in force. The Act applies to the whole of India and subject

A to the provisions contained in s. 16 of the Act it applies (a) to a factory engaged in any industry specified in Schedule I in which 20 or more persons are employed and (b) to "any other establishment employing 20 or more persons or class of such establishments which the Government may by notification in the Official Gazette specify in this behalf". These establishments come with-

B in cl. (b) and are governed by the appropriate notification issued by the Central Government. No contention has been raised before us that the Act and the Scheme were not applicable to the kind of establishments here. Since the objection is that s. 16 excludes the establishments for a period we may read that section here :

"16. Act not to apply to certain establishments.—

C (1) This Act shall not apply—

(a) to any establishment registered under the Co-operative Societies Act, 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

D (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.

E *Explanation.*—For the removal of doubt, 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) . . . . .

F Paragraph 26(1)(a) of the Scheme shows the classes of employees entitled and required to join the Fund. It reads as follows :—

G "26(1)(a) Every employee employed in or in connection with the work of a factory or other establishment to which this Scheme applies, other than an excluded employee shall be entitled and required to become a member of the Fund from the beginning of the month following that in which this paragraph comes into force in such factory or other establishment, if on the date of such coming into force he has completed one year's continuous service or has actually worked for not less than 240 days during a period of twelve months or less in that factory or other establishment or in any other factory or other establishment to which the Act applies under the same employer, or partly in one and partly in the other."

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Now the question in this case is that Hotel Brinda commenced only on January 15, 1959 and the number of employees then exceeded 20 for the first time. Under the provisions of s. 16 an exemption from the Act and the Scheme is claimed for five years and it is submitted no offence was committed because the establishments even if taken together could not be subjected to the provisions till a period of five years had expired from January 15, 1959.

In support of this argument Mr. B. R. L. Iyengar emphasises that the use of the participle 'employing' in s. 1(3)(b) shows some continuity of employment of 20 persons and not the first point of time when that number is reached. He contends that it is always intended that a period of 3 or 5 years, as the case may be, must elapse before the provisions of the Act and the Schemes are made applicable. This is an ingenious way of putting the matter but is not admissible. The language of s. 16(1)(b) is very precise. The last thirteen words of the clause 'from the date on which the establishment is or has been set up', show both cases where the establishment is new and where the establishment is old. The word 'is' shows that a new establishment is meant and the words 'has been' show that the establishment existed before the number is reached. If it was intended to apply the clause to new establishments the words 'is set up' would have been sufficient. The construction sought to be placed would render the words 'has been' otiose. Further the scheme of Paragraph 26 quoted earlier relates to a period of service and this qualifying period may be in the past as well as in the future. The intention behind s. 16 read with paragraph 26 quite clearly shows that the period is intended to give a breathing time to new establishments. That reason does not hold when the establishment is already old and well founded. The use of the participle is therefore immaterial. Whether a present perfect tense or a participle be used the meaning is the same. Clause (b) of s. 1(3) which uses the participle and clause (a) of the same section which employs the present perfect tense both merely describe the establishments and convey no different meanings. The conclusion of the High Court was thus right. The appeals fail and will be dismissed.

V.P.S.

*Appeals dismissed.*