

Srikanta Datta Narasimharaja Wodiyar vs Enforcement Officer, Mysore on 4 May, 1993

Equivalent citations: 1993 AIR 1656, 1993 SCR (3) 508, AIR 1993 SUPREME COURT 1656, 1993 (3) SCC 217, 1993 AIR SCW 1815, 1993 LAB. I. C. 1359, (1993) 3 JT 230 (SC), (1993) 3 SCR 508 (SC), 1993 (3) SCR 508, 1993 LABLR 497, 1993 (3) JT 230, 1993 CRIAPPR(SC) 270, 1993 CALCRILR 114, 1993 SCC (L&S) 751, (1994) 3 SCJ 281, (1993) 2 ALLCRILR 629, (1993) 83 FJR 1, (1993) 67 FACLR 73, (1993) 2 LABLJ 531, (1993) 2 LAB LN 69, (1994) 1 MADLW(CRI) 138, (1993) 2 CURCRIR 205, (1993) 3 CRIMES 705, (1993) 1 CURLR 961

Author: K. Ramaswamy

Bench: K. Ramaswamy, R.M. Sahai

PETITIONER:

SRIKANTA DATTA NARASIMHARAJA WODIYAR

Vs.

RESPONDENT:

ENFORCEMENT OFFICER, MYSORE

DATE OF JUDGMENT 04/05/1993

BENCH:

RAMASWAMY, K.

BENCH:

RAMASWAMY, K.

SAHAI, R.M. (J)

CITATION:

1993 AIR 1656

1993 SCR (3) 508

1993 SCC (3) 217

JT 1993 (3) 230

1993 SCALE (2) 783

ACT:

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Employees Provident Funds and Miscellaneous Provisions Act
1952:

Sections 2 (e), (k), 14A.

Employees Provident Funds Scheme 1952: Para 76.

Employees Family Pension Scheme 1971.

Employees Deposit Linked Insurance Scheme 1976.

Director of private company-Neither occupier nor manager-
Whether liable for prosecution under Section 14A of 1952 Act

for violation of Provident Fund Scheme.

HEADNOTE:

The appellant was one of the Directors of a Company registered under the Companies Act This company was also registered under the Factories Act and its object was to manufacture Motorcycles and its accessories. It had a Managing Director, Joint Managing Director and Directors including the appellant for managing the establishment.

The respondent- an Enforcement Officer, Regional Provident Fund Commissioner's Office laid 18 complaints against six accused including the appellant (A-6) and the Company-employer, for the failure to deposit the contribution for the period October to December 1990 to the Provident Fund Account under the Employees Provident Fund and Miscellaneous Provisions Act, 1952, Employees Provident Fund Scheme 1952, Employees Family Pension Scheme, 1971 and Employees Deposit Linked Insurance Scheme 1976, offences punishable under Section 14A of the 1952 Act read with para 76 of the 1952 Scheme.

On the Magistrate taking cognizance of the complaint, the appellant filed Criminal Miscellaneous Petitions in the High Court for quashing the complaint as they did not contain the relevant averments constituting offences against the appellant. It was contended that the appellant was a mere Director of the Company, that he was neither incharge of the company nor was

509

responsible to comply with the provisions of the aforesaid Act and the Schemes thereunder. Reliance was placed on the definition of 'employer' in Section 2 (e) of the Act and the liability that had been fastened on the Managing Director or the Manager or occupier of the establishment to abide by the Act and the Schemes. The High Court dismissed the applications.

The appellant appealed to this Court and contended that the reading the definition of 'employer' in section 2(e) of the Act with Sections 30,14(1a) and para 31 of the Scheme, demonstrate that the employer in relation to the establishment means the owner or occupier of the factory which includes the Agent or the Manager of the factory under the Factories Act, that there was an occupier and Manager recorded for the instant company, and that they were Incharge of and were solely responsible to comply with the Act and the Schemes thereunder and that no specific averments have been made in the complaint making the appellant responsible for the management of the factory or the liability to comply with the Act and the Schemes. The complaint laid against the appellant was therefore illegal and the cognizance taken by the Magistrate was vitiated by manifest error of law.

On the question: whether a Director of a Private Company, who is neither an occupier nor a manager can be prosecuted under Section 14(A) of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 for violation of the Provident Fund Scheme.

Dismissing the appeals, this Court,

HELD: (By the Court K. Ramaswamy & R.M. Sahai, JJ.)

1. The Employees' Provident Fund and Miscellaneous Provisions Act 1952 by Section 2(e) defines 'employer'. It is an inclusive definition and consists of two clauses which are vide in their sweep. In Clause (i) are included not only owner or occupier but even the agent or manager. When it comes to establishments other than factory it is not confined to owner or occupier but to all these who have central or are responsible for the affairs of the company. It includes even director. Therefore, every such person who has the ultimate control of the affairs of the company becomes employer. Section 2(k) defines 'occupier' which means the person who has the ultimate control of the factory, and where the said affairs are entrusted to a Managing Agent, such agent shall be deemed to be the occupier of the factory. Therefore, by its extended definition its sweep is enlarged bringing within its scope the person who is incharge of or responsible for, the management or 1

510

ultimate control over the affairs of the factory or establishment. In the event of entrustment to a Managing Agent, such Managing Agent shall also be deemed 'to be the occupier of the factory'. (514-GH,)

2. In the instant case, the appellant having been declared himself as one of the person Incharge of and was responsible for conduct of the business of the establishment or the factory in Form 5A the complaint and non-compliance thereof having been enumerated in para 3 of the complaint, it was validly made against the appellant along with other accused for the alleged Contravention. Necessary allegations bringing out the ingredient of offence have been made out in the complaint. Therefore, the Magistrate has rightly taken cognizance of the offence alleged against the appellant. (518-A-B)

(Per K. Ramaswamy, J.)

1. The Act and the Schemes are self-contained code for deduction from the salary of the employees and the responsibility to contribute in equiproportion of the employer's share and deposit thereof in the account within the specified time under the Act and the Schemes into the account. It is a welfare legislation to provide benefits to the employees as per the schemes. They need mandatory compliance and violation thereof visits with penal action. (514-E)

2. Section 6 fastens the obligation on the employer. It postulates that the contribution to the fund shall be made by the employer. (515-A)

3. Under para 30 of the Employees' Provident Fund Scheme, 1952 and the other Schemes, the employer shall deposit the contribution to the Fund. (515-B)

4. The employer shall, in the first instance, pay both the contributions payable by himself (in the Scheme referred to as employer's contribution) and also on behalf of the members employed by him directly or through a Contractor, the contribution payable by such member (in the Scheme referred to as member's contribution). (515-G)

5. Para 38 provides that the employer shall send to the Commissioner within 15 days of the close of every month, pay the same to the Fund by separate Bank Drafts or cheques and the administrative charges within 25 days of close of the month, the employer shall submit a monthly consolidated

511

statement as per form 5 with particulars mentioned therein. (515-H, 516-A)

6. Para 76 also fastens criminal offence for non-compliance of the provisions of the schemes on the persons incharge of and responsible for the management or control of the establishment.

7. Every person, who at the time the offence was committed, was Incharge of and was responsible to the establishment for conduct of its business as well as the company shall be liable to be proceeded against and punished accordingly. (517-C)

8. Form 5-A read with para 36A give an option to the employer to furnish particulars of ownership and the branches of the department, owners, occupiers, directors, partners, manager or other person or persons who have ultimate control over the affairs of such factory or establishment incharge of and responsible for the conduct of the business of the company and compliance of the statutory obligation fastened under the Act and the relevant schemes. It is made mandatory to the employer to abide by the same and noncompliance thereof is liable for prosecution under Section 14A of the Act (517-D)

Municipal Corpn. of Delhi v. Ram Kishan Rohtagi & Ors.; [1983] 1 SCC 1 and Employees' State Insurance Corpn. v. Gurdial Singh & Ors. [1991] Supp. 1 SCC 204, referred to. Employees' State Insurance Corporation v. Gurdial Singh & Ors. (1991 Supp. 1 SCC 204, and Municipal Corporation of Delhi v. Ram Kishan Rohtagi & Ors., [1983] 1 SCC 1, distinguished.

(Per R.M. Sahai, J.)

1. The Act is a welfare legislation enacted for the benefit of the employees engaged in the factories and establishments and is directed towards achieving this objective by enacting provisions requiring the employer to contribute towards Provident Fund, Family Pension and Insurance and keep the Commissioner informed of it by filing regular returns and submitting details in forms prescribed for that purpose. (518-G)

512

2. Paragraph 36A of the Provident Fund Scheme framed by Central Government under Section 5 of the Act requires the employer in relation to a factory or other establishment to furnish Form 5A mentioning details of its branches and departments, owners, occupiers, directors, partners, managers or any other person or persons who have ultimate control over the affairs of the factory or establishment. The purpose of giving details of the owners, occupiers and directors etc, is not an empty formality but a deliberate intent to widen the net of responsibility on any and every one for any act or omission. It is necessary as well as in absence of such responsibility the entire benevolent scheme may stand frustrated. (519-A-B)

3. The anxiety of the Legislature to ensure that the employees are not put to any hardship in respect of Provident Fund is manifest from sections 10 and 11 of the Act. The former grants immunity to provident fund from being attached for any debt outstanding against the employee. And the latter provides for priority of provident fund contribution over other debts if the employer is adjudged insolvent or the company is wound up. Such being the nature of provident fund any violation or breach in this regard has to be construed strictly and against the employer. (519-C)

4. Sections 14 and 14A provides for penalties. The one applies to whosoever is guilty of avoiding payment of provident fund and to employer if he commits breach of provisions mentioned in its various clauses whereas Section 14A fastens liability on certain person if the persons committing the offence is company. The scope of the two sections is same. Latter is wider in its sweep and reach. The former applies to anyone who is an employer or owner or is himself responsible for making payment whereas latter fastens the liability on all those who are responsible or are in charge of the company for the offence committed by it. (519-D-E)

5. Sub-sections (1) and (2) of Section 14A extend the liability for any offence by any person including a partner by virtue of explanation if he was incharge or was responsible to the company at the time of committing the offence. The expression, 'was in charge of and was responsible to the company for the conduct of the business' are very wide in their import. It could not, therefore, be confined to employer only. (520-D)

6. To say therefore that since paragraph 36A requires an employer to do certain acts the responsibility for any violation of the provision should be confined to such employer or owner would be ignoring the purpose and

513

objective of the Act and the extended meaning of 'employer' in relation to establishments other than the factory. The declaration therefore in Form 5A in the instant case

including appellant as one of the persons in charge and responsible for affairs of the company was in accordance with law, therefore, his prosecution for violation of the scheme does not suffer from any error of jurisdiction or law. (521-B-C)

JUDGMENT :

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal Nos. 402 to 419 of 1993.

From the Judgment and Order dated 3.3.1992 of the Karnataka High Court in Crl. Petitions Nos. 1574 to 1584 of 1991 and 1588 to 1594 of 1991.

M.S. Nesargi, R.C. Mishra and Dr. (Mrs.) Meera Aggarwal (For Aggarwal & Mishra & Co.,) for the Appellant. V.Gauri Shankar, Anil Srivastava and Mrs. Anil Katiyar (NP) for the Respondent.

The Judgments of the Court were delivered by K. RAMASWAMY.J. Special Leave granted.

Since common question of law arises in these 18 appeals for decision, they are disposed of by a common judgment. The appellant is one of the Directors of M/s Ideal Jawa (India) Ltd. Yadavagiri, Mysore, a Private Ltd. Company established under the Companies Act. It was also registered under the Factories Act, 1948. Its object is to manufacture Motor-Cycles and its accessories. It has its Managing Director, Joint Managing Director and Directors including the appellant to manage the establishment. The respondent laid 18 complaints against six accused including the appellant(A-6) and the Company, employer, for their failure to deposit the contribution for the periods of October to December, 1990 to the Provident Fund Account No. NK 2260 under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, for short 'the Act', Employees' Provident Funds Scheme, 1952, Employees' Family Pension Scheme, 1971 and Employees' Deposit- Linked Insurance Scheme, 1976, for short 'the Schemes' punishable under S. 14A of the Act read with para 76 of 1952 scheme. On the Magistrate's taking cognizance thereof, the appellant laid Crl. M.Ps. in the High Court to quash the complaints as they do not contain the relevant averments constituting the offences against the appellant. It is his case that he is a mere Director of the Company. He was neither Incharge of the Company, nor is responsible to comply with the provisions of the Act and the Scheme,. In support thereof he placed reliance on the definition 'employer' and the liability has been fastened on the Managing Director or the Manager or occupier of the establishment to abide by the Act and the Schemes. The High Court by its order dated March 3, 1992, dismissed the applications. Thus these appeals.

Sri Nesargi, learned Sr. counsel for the appellant contended that a reading of the definition 'employer' in s.2(e) read with ss. 30, 14 (1-A) and paras 30 and 38 of the Schemes demonstrates that the employer in relation to an establishment means the owner or occupier of the factory which includes the Agent or the Manager of the Factory under the Factories Act. One Sri N.K. Khudamurad was recorded as occupier and one Sri D.K. Darashawas recorded as the Manager. They are Incharge of and were responsible to comply with the Act and the Schemes. No specific averments were made

in the complaint making the appellant responsible for the management of the factory or the liability to comply with the Act and the Schemes. The complaint, therefore, laid against him is illegal and the cognizance taken by the Magistrate is vitiated by manifest error of law. In support thereof he placed reliance on the decisions of this court in *Municipal.Corpn. of Delhi v. Ram Kishan Rohtagi & Ors.* [1983] 1 SCC 1 and *Employees' State Insurance Corpn.v.Gurdial Singh & Ors.* [1991] Supp. 1 SCC 204.

The Act and the Schemes are self-contained code for deduction from the salary of the employees and the responsibility to contribute in equi-proportion the employer's share and deposit thereof in the account within the specific time under Act and the Schemes into the account. It is a welfare legislation to provide benefits to the employees as per the schemes. They need mandatory compliance and violation thereof visits with penal action. Section 2(e) of the Act defines 'employer' which means in relation to an establishment which is a factory, the owner or occupier of the factory, including the Agent of such owner or occupier, the legal representative of deceased owner or occupier and, where a person has been named as a Manager of the factory under clause (f) of sub-s. (1) of s.7 of the Factories Act, 1948, the person so named.....

The definition is an inclusive definition bringing within its ambit the owner or occupier as well:" its Manager. Section 2(k) defines 'occupier' which means the person who has ultimate control over the affairs of the factory, and, where the said affairs are entrusted to a Managing Agent such Agent shall be deemed to be the occupier of the factory. Therefore, by its extended definition its sweep is enlarged bringing within its scope the person who is incharge or responsible for in management or ultimate control over the affairs of the factory or establishment.

In the event of entrustment to a Managing Agent, such Managing Agent shall also be deemed 'to be the occupier of the factory'. Section 6 fastens the obligation on the employer in this behalf. It postulates that the contribution shall be made by the employer to the Fund and shall be 8-1/3% of the basic wages, dearness allowances and retaining allowances, if any, for the payment being payable to each of the employees, whether employed by him directly or through a Contractor. The employee's contribution shall be equal to the contribution payable by the employer in respect of him, etc. in its application to any establishment or class of establishments. Other provisions are not relevant, hence they are omitted. Under para 30 of the Employees' Provident Fund Scheme, 1952 and the other Schemes, the employer shall deposit the contribution to the Fund.

Under para 36A of the Scheme the employer is enjoined to furnish particulars of the ownership of the factory which provides thus:

"36-A Employer to furnish particulars of ownership:- Every employer in relation to a factory or other establishment to which the Act applies on the date of coming into force of the Employees' Provident Funds Scheme, 1961, or is applied after that date, shall furnish in duplicate to the Regional Commissioner in Form No. 5A annexed hereto particulars of all the branches and departments, owners, occupiers, directors, partners, manager or any other person or persons who have the ultimate control over the affairs of such factory or establishment and also sent intimation of any change in

such particulars, within fifteen days of such change, to the Regional Commissioner by registered post and in such other manner as may be specified by the Regional Commissioner.

Provided that in the case of any employer of a factory or other establishment to which the Act and the Family Pension Scheme, 1971, shall apply the aforesaid Form may be deemed to satisfy the requirements of the Employees' Family Pension Scheme, 1971, for the purpose specified above."

The employer shall, in the first instance, pay both the contributions payable by himself (in the Scheme referred to as employer's contribution) and also on behalf of the members employed by him directly or through a Contractor, the contribution payable by such member (in the Scheme referred to as member's contribution). Para 38 provides that the employer shall send to the Commissioner within 15 days of the close of every month, pay the same to the Fund by separate Bank Drafts or cheques and the administrative charges. Within 25 days of close of the month, the employer shall submit a monthly consolidated statement as per form 5 with particulars mentioned therein.

Form 5-A envisages to give particulars in Columns 1 to 7 thereof, i.e. particulars of owner, etc. The appellant's establishment stated the name of the establishment as Ideal Jawa (India) Ltd., Code No. of the establishment, its address, nature of business, period of its commencement and manufacturing status, have been given. In Column 8 the establishment is to furnish the names of the owner-company, Directors. It was mentioned therein as Mr. N.K. Irani as Managing Director; the appellant as one of the Directors and others. In column 10 the names of occupier and Manager as registered under the Factories Act were given. In Column 11 which specifies particulars thus: 'particulars of the persons mentioned above, who are Incharge of, and responsible for the conduct of the business of the establishment'. Therein it was stated that "as per the details mentioned in item 8". As stated earlier in column 8 the names of the Managing Director, the Joint Managing Director and two Directors including the appellant have been mentioned.

Section 14A which is penal states thus:

"14A. Offences by Companies:-

(1) If the person committing an Offence under this Act, the Scheme or the Family Pension Scheme or the Insurance Scheme in a company, every person who at the time the offence was committed was Incharge of and was responsible to the company for the conduct of the business of the company, as well as the company shall be deemed to be guilty of the offences and shall be liable to be proceeded against and punished accordingly.

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2)Notwithstanding anything contained in sub-s. (1), where an offence under this Act, the scheme or the Family Pension Scheme or the Insurance Scheme has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of any director or manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.
Explanation:For the purposes of this Section-

(a) "Company" means any body corporate and includes a firm and other association of individuals; and

(b) "director" in relation to a firm means a partner in the firm."

Para 76 also fastens criminal offence for non-compliance of the provisions of the schemes on the persons incharge of and responsible for the management or control of the establishment. It could thus be seen that every person, who at the time of the offence was committed, was Incharge of and was responsible to the establishment for conduct of its business as well as the company shall be liable to be proceeded against and punished accordingly. It is seen that Form 5-A read with para 36A give an option to the employer to furnish particulars of ownership and the branches of the department, owners, occupiers, directors, partners, manager or other person or persons who have ultimate control over the affairs of such factory or establishment incharge of and responsible for the conduct of the business of the company and compliance of the statutory obligation fastened under the Act and the relevant schemes. Particulars in column 8 as regards owners and column 10 relates to Manager or occupier and their names, addresses etc. and column 11 refers to the persons Incharge of, and are responsible to the management of the establishment or factory are specified. In form 5-A, as seen earlier in columns 8 and 11, it was specifically stated that the Managing Director, Joint Managing Director and Directors including the appellant as not only owners of the factory, but are Incharge of and responsible for the management of the factory and the establishment. In paragraph 3 of the complaint, It was specifically stated, "that accused 2 to 6 (appellant) are the persons Incharge of the said establishment and are responsible for conduct of its business. They are thus required to comply with all the provisions of the Act and the Schemes in respect of the said establishment". It is made mandatory to the employer to abide by the same and non-compliance thereof is liable for prosecution under s. 14A of the Act. Section 14(1-A) relied on by Sri Nesargi relates to only liability for punishment for contravention or making default to comply with s. 6 or s. 17 (3-A) in so far as it relates to the payment of inspection charges and para 38 of the Scheme in so far as it relates to payment of administrative charges. That has no application as regards the offence covered under s. 14A by the companies are concerned. Accordingly, we hold that the appellant having been declared himself as one of the person Incharge of and responsible for conduct of the business of the establishment or the factory, the complaint and non-compliance thereof having been enumerated in subsequent paras of the complaint, it was validly made against the appellant along with other accused for the alleged contravention. Necessary allegations bringing out the ingredient of offence have been made out in the complaint. Therefore, the learned Magistrate has rightly been taken cognizance of the offence alleged against the appellant. Employees' State Insurance Corporation v. Gurdial Singh & Ors. [1991] Supp. 1 SCC 204 is the case relating to an admission made by the prosecution that the Directors were not Incharge nor are responsible for

compliance of the provisions of the Employees' State Insurance Act, 1948, "Admittedly the company had a factory and it is not in dispute that the occupier of the factory had been duly named. It is also not in dispute that it has a Manager too". In view of this admission the Directors were held not responsible for non-compliance with the provisions of the Employees' State Insurance Act, 1948. The ratio therein, therefore, does not assist the appellant. Equally in *Municipal Corporation of Delhi v. Ram Kishan Rohtagi & Ors.* [1983] 1 SCC 1 for an offence under Prevention of Food Adulteration Act specific provision of Food Adulteration Rules provide to nominate occupier or Manager responsible for the production or manufacture of articles of food, etc. by the company and were nominated. Under those circumstances, this court upheld the quashing of the proceedings against the Directors as the complaint did not contain necessary allegations constituting the offence against the Directors. The appeals are thus dismissed. R.M. SAHAI, J. Can a director of a private company, who is neither an occupier nor a manager be prosecuted under Section 14(A) of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (in brief 'the Act') for violation of the Provident Fund Scheme.

That depends, obviously, on the scheme of the Act the liability it fastens on the director of the Company and applicability of the penal provisions to the statutory violation or breach of the scheme framed under it. But before doing so it may not be out of place to mention that the Act is a welfare legislation enacted for the benefit of the employees engaged in the factories and establishments. The entire Act is directed towards achieving this objective by enacting provisions requiring the employer to contribute towards Provident Fund, Family Pension and Insurance and keep the Commissioner informed of it by filing regular returns and submitting details in forms prescribed for that purpose. Paragraph 36A of the Provident Fund Scheme framed by Central Government under Section 5 of the Act requires the employer in relation to a factory or other establishment to furnish Form 5A mentioning details of its branches and departments, owners, occupiers, directors, partners, managers or any other person or persons who have ultimate control over the affairs of the factory or establishment. The purpose of giving details of the owners, occupiers and directors etc. is not an empty formality but a deliberate intent to widen the net of responsibility on any and every one for any act or omission. It is necessary as well as in absence of such responsibility the entire benevolent scheme may stand frustrated. The anxiety of the Legislature to ensure that the employees are not put to any hardship in respect of Provident Fund is manifest from Sections 10 and 11 of the Act. The former grants immunity to provident fund from being attached for any debt outstanding against the employee. And the latter provides for priority of provident fund contribution over other debts if the employer is adjudged insolvent or the company is wound up. Such being the nature of provident fund any violation or breach in this regard as to be construed strictly and against the employer.

Reverting to the statutory provision Sections 14 and 14A provide for penalties. The one applies to whosoever is guilty of avoiding payment of Provident fund and to employer if he commits breach of provisions mentioned in its various clauses whereas Section 14A fastens liability on certain persons if the person committing the offence is a company. The scope of the two sections is same. Latter is wider in its sweep and reach. The former applies to anyone who is an employer or owner or is himself responsible for making payment whereas latter fastens the liability on all those who are responsible or are in charge of the company for the offence committed by it. Section 14A reads as under:

"14-A. Offences by companies-(1) If the person committing an offence under this Act, the Scheme or the Family Pension Scheme or the Insurance Scheme is a company, every person, who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act, the Scheme or the Family Pension Scheme or the Insurance Scheme has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director or manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation- For the purposes of this section,-

(i) "company" means any body corporate and includes a firm and other association of individuals; and

(ii) "director", in relation to a firm means a partner in the firm."

Sub-sections (1) and (2) extend the liability for any offence by any person including a partner by virtue of explanation if he was in charge or was responsible to the company at the time of committing the offence. The expression, 'was in charge of and was responsible to the company for the conduct of the business' are very wide in their import. It could not, therefore, be confined to employer only. The employer is defined by Section 2(e) to mean, "2 (e).-'employer' means-

(i)in relation to an establishment which is a factory, the owner or occupier of the factory, including the agent of such owner or occupier, the legal representative of a deceased owner or occupier and, where a person has been named as a manager of the factory under clause (f) of sub-

section (1) of Section 7 of the Factories Act, 1948, the person so named; and

(ii)in relation to any other establishment, the person who, or the authority which, has the ultimate control over the affairs of the establishment, and where the said affairs are entrusted to a manager, managing director or managing agent, such manager, managing director or managing agent;"

Both clauses (i) and (ii) again are wide in their sweep. In clause (i) are included not only owner or occupier but even the agent or manager. When it comes to establishments other than factory it is not confined to owner or occupier but to all those who have control or are responsible for the affairs of the company. It includes even director. Therefore, every such person who has the ultimate control over the affairs of company becomes employer. To say therefore that since paragraph 36 A requires an employer to do certain acts the responsibility for any violation of the provision should be confined to such employer or owner would be ignoring the purpose and objective of the Act and the extended meaning of employer in relation to establishments other than the factory. The declaration therefore in Form 5A including appellant as one of the persons in charge and responsible for affairs of the company was in accordance with law therefore his prosecution for violation of the scheme does not suffer from any error of jurisdiction or law. ORDER For reasons given by us in our concurring but separate orders the appeals fail and are dismissed.

NVK.

Appeals dismissed.