Supreme Court of India
Mohmedalli And Others vs Union Of India And Another on 9 November, 1962
Equivalent citations: 1964 AIR 980, 1963 SCR Supl. (1) 993
Author: S C.
Bench: Shah, J.C.

PETITIONER:
MOHMEDALLI AND OTHERS

Vs.

RESPONDENT:
UNION OF INDIA AND ANOTHER

DATE OF JUDGMENT:
09/11/1962

BENCH:
SHAH, J.C.
BENCH:
SHAH, J.C.
SINHA, BHUVNESHWAR P.(CJ)
GAJENDRAGADKAR, P.B.
WANCHOO, K.N.
GUPTA, K.C. DAS

CITATION:
1964 AIR 980 1963 SCR Supl. (1) 993
CITATOR INFO :
R 1979 SC 607 (8)
R 1979 SC1803 (41)
RF 1991 SC1289 (10)

ACT:
Provident Fund-Constitutional validity of enactment and scheme framed thereunder-Employees' Provident Funds Act , 1952 (19 of 1952) as amended by Act 46 of 1960, ss. 1(3) (b), 16,17-Constitution of India, Art. 14.

HEADNOTE:
By a notification issued by the Central Government under s. 1 (3) (b) of the Employees' Provident Funds Act, 1952 the petitioners' restaurant was brought under the Act. By a further notification under s. 5 read with s. 7 (1) of the Act, the Employees' Provident Fund (Second Amendment) Scheme, 1961, was introduced. The petitioners challenged the constitutional validity of the said scheme and the sections under which it was made and applied to their restaurant. It was urged that s. 1 (3) (b) of the Act conferred uncontrolled and uncanalised, power on the

Government, that the Act had application only to wage-earners and not to salaried employees as those, employed in the petitioners' restaurant and that the scheme was discriminatory and therefore hit by Art. 14 of the Constitution.

Held, that whether or not a particular piece of legislation suffers from excessive delegation has to be judged on a consideration of the facts and circumstances that led to the enactment of the impugned statute. If the Act and its preamble do not clearly indicate the underlying principles or the criteria for its application, the inevitable conclusion must be that the delegate is entrusted not merely with the function of applying the law, but substantially with the legislative power itself. So judged, it could not be said that the power entrusted to Central Government to bring by notification such establishments as it thought fit within the purview of the impugned Act was uncontrolled or uncanalised.

The Edward Mills Co. Ltd. Beawar v. The State of Ajmer, [1955] 1 S. C. R. 735, Vasantlal Maganbhai Sanjanwala, [1951) 1 S. C. R. 341 and Hamdard Dawakhana Wakf) Lal Kuan, Delhi v. Union of India, [1960] 2 S. C. R(W. 671, referred to.

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The Act makes no distinction between wages and salary. In principle there is no difference between the two and it was not correct to say that the Act was not intended to apply to salaried employees, if by salary was meant fortnightly or monthly wages running into hundreds per month.

The Act was not discriminatory and did not infringe Art. 14. It applied to all establishments since s. 16 was amended by Act 46 of 1960 except .those registered under the Co-operative Societies Act, 1912, and those newly set up till the expiry of three or five years. As was held by this Court co-operative societies stood on a different footing from other establishments. Exemption under s. 17 also could not be said to be discriminatory. The petitioners' establishment, which came within the notification, was not therefore, discriminated against.

JUDGMENT:

ORIGINAL JURISDICTION : Petition No. 56 of 1962. (Under Article 32 of the Constitution of India for the enforcement of Fundamental Rights).

N. C. Chatterji, S. K. Kapur and K. K. Jain, for the Petitioners.

H. N. Sanyal, Additional Solicitor General of India, M. S. K. Sastri and R. H. Dhebar, for the Respondents. 1962. November 9. The judgment of the Court was delivered by SINHA, C. J This

petition, under Art. 32 of the Constitution, challenges the vires of certain provisions of the Employees' Provident Funds Act (19 of 1952) which hereinafter will be referred to as the Act, and the scheme framed thereunder. The respondents to this petition I are the Union of India and the Regional Provident Fund Commissioner.

The petition is founded on the following allegations. The petitioners, 5 in number, are citizens of India and are carrying on business of running a restaurant and general stores under the name and style of "Messrs George Restaurant and Stores" at 20, Appollo Street, Fort, Bombay-1, since September, 1958. They are. running this business as a partnership firm, registered under the Indian Partnership Act. The firm employs 43 persons, including cooks, waiters, tea-makers, bill clerks and two store-clerks. Besides paying salary to their employees, the petitioners give them free food and other personal allowances, which it is not necessary to set out in detail. In exercise of the powers conferred by s. 1(3)(b) of the Act, the General Government issued the notification No. G.S.R. 704, dated May 16, 1961, in the following terms:

> "G.S.R. 704--In exercise of the ,powers con- ferred by Clause (b) of sub-section 3 of Section 1 of the Employees' Provident Fund Act, 1952 (19 of 1952), the Central Government hereby directs that. with effect from June 30, 1961, the said Act shall apply. to the following classes of establishments, in each of which twenty or more persons are employed, namely i. Hotels.
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> ii. Restaurants.

As a result of the notification aforesaid, the operation of the Act has been extended to hotels and restaurants, including the one run by the petitioners. Subsequently, the Central Government issued a notification 'under s. 5, read with s. 7(1), of the Act, the relevant portions of which are in these terms :

> " G.S.R. 783.-In exercise 1 of the powers con- ferred by section 5 read with subsection (1) of section 7, of the Employees' Provident Funds Act, 1952 (19 of 1952), the Central Government hereby makes the following Scheme further to amend the Employees' Provident Fund Scheme, 1952, namely
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> 1. This Scheme may be called the Employees' Provident Funds (Third Amendment) Scheme, 1961.
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> 2. In the Employees' Provident Fund Scheme, 1952, in clause (b) of sub-paragraph. (3) of paragraph 1, sub-clause (xvii)shall be re- numbered as sub-clause (xix) thereof and the following shall be inserted as sub-clauses (xvii) and (xviii), namely:-
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> "(xvii) as respects hotels and, restaurants Covered by the notification of the,Government of India 'in the Ministry of Labour and Employment No. G.S.R. 704 dated May 16, 1961 come into force on the 30th day of June 1961;....

The said notification introduced the scheme, as the Employees' Provident Funds (Third Amendment) Scheme, 1961. The petitioners challenge the constitutionality of the scheme aforesaid, and the section of the Act in pursuance of which it was brought into existence. The petitioners pray for a writ or order or direction quashing the said notifica- tions and for issue of a mandamus to the respondents not to apply the said scheme to the petitioners establishment. Before dealing with the specific grounds of attack raised in support of the petition, it is necessary to set out briefly the relevant provisions of the Act. The Act applies to every establishment which is a factory engaged in any industry specified in schedule 1 and in which 20 or more 'persons are employed, and to any other establishment employing 20 or more persons or class of such establishments which is Central Government may by notification in the Official Gazette, specify in this behalf. `Employee' has been defined 'in S. 2(f) as follows:

" employee' means any person who is employed for wages in any kind of' work, manual or otherwise, in or in connection with the work of an establishment, and who gets his wages directly or indirectly from the employer, and includes any person employed by or through a contractor in or in connection with the work of the establishment."

Section 5 authorises the Central Government to frame a scheme to be called the Employees' Provident Fund Scheme, for the establishment of provident funds under the Act for employees or any class of employees and establishments or class of establishments to which the scheme may be applied, by notification in the Official Gazette. The contribution of the employer to the fund shall be 61% of the basic wages and dearness allowance and retaining allowance, if any, and the employees contribution shall be equal to the employer's contribution, subject to his contribution being raised to the maximum of 6 1/3 %, if the employee so desires and the scheme so provides. Dearness allowance for the purposes of contribution shall be deemed to include also the cash value of any food concession allowed to the employee. Section 7 authorises the Central Government to add to, amend or vary any scheme framed under the Act. By s. 16 it is provided that the Act shall not apply to any establishment registered under the Co-operative Societies Act of 1912, or to any other establishment employing 50 or more persons or 20 or more but less than 50 persons until the expiry of 3 years in the case of the former and 5 years in the case of the latter, from the date on which the establishment is set up. Section 17 empowers the appropriate Government, by notification in the Official Gazette, to exempt .from the operation of all or any of the provisions of any scheme any establishment to which the Act applies, if in the opinion of the Government the rules of its provident fund with respect to the rates of contribution are not less favourable than those specified in s. 6 and the employees are also in enjoyment of other provident fund benefits which on the whole are not less favorable to the employees than the benefits provided under this Act, as also any establishment if the employees of such establishment are in enjoyment of benefits in the nature or provident fund, pension or gratuity, which on the whole are not less favorable to such employees. Section 19 provides for delegation of powers.

It has been contended (1) that s. 1(3)(b) under which the notification including restaurants and hotels were brought under the operation of the Act, is invalid because-it confers uncontrolled and uncanalised power on the Government; (2) that the Act was intended to apply to mere wage earners and not to salaried people and that, therefore, the two,notifications as a result of which the

petitioners employees have been brought within the purview of the Act are bad inasmuch as they are salaried employees and not mere wage-earners; and (3) that the scheme is bad under Art. 14 of the Constitution because it is dis- criminatory.

In our opinion there is no substance in any one of these contentions. It' cannot be asserted that the powers entrusted to the Central Government to bring within the purview of the Act such establishments or class of establishments as the Government may by notification in the Official Gazette specify is uncontrolled and uncanalised. The whole Act is directed to institute provident funds for the benefit, of employees in factories and other establishments, as the preamble indicates. The institution of provident fund for employees is too, well-established to admit of any doubt about its utility as a measure of social justice. The underlying idea behind the of the Act is to bring all kinds of employees within its fold as and when the Central Government might think fit, after reviewing the circumstances of each class of establishments. Schedule 1 to the Act contains a list of a large variety of industries engaged in the manufacture of diverse commodities, mentioned therein. To all establishments which are factories engaged in. the industries enumerated in Schedule 1, the Act has been made) applicable of its own force, subject to the provisions of s. 16, which has indicated the establishments to which the Act shall not apply. The Schedule is liable to be added to or modified so as to include other categories of industries not already included in schedule 1. So far as establishments which do not come with in the description of factories engaged in industries the Central Government has been vested with the power of specifying such establishment and class of establishments, as it might determine to be brought within the purview. of the Act. The Act has given sufficient indication of the policy underlying its provisions namely, that it shall apply to all factories engaged in any kind, of industry and to all other establishments employing 20 or more persons.This court has repeatedly laid it down that where the discretion to apply the provisions of a particular statute is left with Government, it will be presumed that the discretion so vested in such a high authority will not be abused. The Government is in a position to have all the relevant and necessary information in relation to each kind of establishment enabling it to determine which of such establishments can bear the additional burden of making contribution by way of provident fund, for the benefit of its employees. The power to exempt given, to the appropriate Government under s. 17 is, not uncanalised because both cls. (a) and (b) of that section postulate that the exemption would be granted on the ground that the employees of 'those establishments are already in the enjoyment of benefits in the nature of provident fund, pension or gratuity not less favorable to them than under the Act. Sub-section (3) of s.1 lays down the general rule in these terms as regards the applicability of the Act:

> (3) Subject to the-provisions contained in section 16, it applies-
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> (a) to every establishment which is a factory engaged in any industry specified in Schedule 1 and in which twenty or more persons are employed, and
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> (b) to any other establishment employing twenty 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 Provision of this Act to any establishment employing such number of persons less than twenty as may be specified in the notification."
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> The term ,industry' used in the sub-section,quoted above, is defined 'in s. 2(i), as follows "'industry' means any industry specified in Schedule '1, and includes any other industry added to the Schedule by notification under section
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> 4."

By s. 4, the Central Government has been authorised to add to the Schedule any other industry in respect of the employees whereof it is of opinion that a provident fund scheme should be framed under the Act, and when such a notification 1st issued, the industry so added shall be deemed to been industry specified in the Schedule. The general rule as to the application of the Act has been laid down in that sub-section. By way of exception to that general rule, the Appropriate Government has been- authorised by s. 17 to exempt from the operation of all or any of the provisions of any scheme framed under the Act. The scheme is to be framed by the Central Government, under s. 5, for the establishment of provident fund under the Act for employees or any class of employees, in pursuance of the provisions of the Act. And the scheme in question in this case, as already indicated, has actually- been framed and is under challenge in this case. The relevant provisions of s. 17 are in these words :

> "17. Power to exempt.-(1) The appropriate Government may, by notification in the Official Gazette, and subject to such conditions as may be specified in the notification, exempt from the operation of all or any of the provisions of any Scheme-
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> (a) any establishment to which this Act applies if, in the opinion of the appropriate Government, the rules of its provident fund with respect to the rates of contribution are not less favorable than those specified in section 6 and the employees are also in enjoyment of other provident fund benefits which on the whole are not less favorable to the employees than the benefits-provided under this Act or any Scheme in relation to the employees in any other establishment of a similar characters; or
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> (c) any establishment if the employees of such establishment are in enjoyment of benefits in the nature of provident fund, pension or gratuity and the appropriate Government is of opinion that such benefits, separately or jointly are on the whole not less favorable to such employees than the benefits provided under this Act or any scheme in relation to employees An any other esta- blishment of a similar character."

It would appear from the terms of the relevant portion of s. 17 Chat the exemption to be granted by the appropriate Government is not in the nature of completely absolving the establishments from all liability to provide the facilities contemplated by the Act. The exemptions are to be granted by the appropriate Government only if in its opinion the exempted establishment has provisions made for provident fund, in terms at least equal, if not more favorable, to its employees. In other words, the exemption is with a view to avoiding duplication and permitting the employees concerned. the

benefit of the pre- existing scheme, which presumably has been working satisfactorily, so that the exemption is not meant to deprive the employees concerned of the benefit of a provident fund but to ensure to them the continuance of the benefit which at least is not in terms less favorable to them. As the whole scheme of provident fund is intended for the benefit of employees, s. 17 only saves pre-existing schemes of provident fund pertaining to particular establishments. Hence, the provisions of sub-s. (3), of s. 1, read alongwith those of s. 17, quoted above, cannot be said to have conferred uncontrolled and uncanalised power on the appropriate Government. In this connection. the decision of this Court in The Eduard Mills Co. Ltd., Beawar v. The State of Ajnwr(1) may be referred to. In that case, the provisions of s. 27 of the Minimum Wages Act (11 of 1948) were questioned as having given uncanalised power. The provisions of that Act run more or less on parallel lines to those of the Act impugned in this case. The Schedule attached to the Minimum Wages Act gave a list of the employments in respect of which minimum wages were to be fixed. Under S. 27 of that Act, power had been given to the "appropriate Government" to add to the Schedule any employment in respect of which it was of the opinion that minimum wages should be fixed. Those provisions were attacked as lacking in legislative (1) [1955] 1 S.C.R. 735.

policy according to which a particular employment shall be chosen for being included in the schedule. The contention in that case that no principles had been prescribed and no standards laid down which could furnish an intelligent guide to the executive authority in making the selection of employments was repelled by this Court. A similar question was raised in this Court in the case of Vasantal Maganbhai Sanjanuwala v. The State of Bombay (1) challenging the vires of s. 6 (2) of the Bombay Tenancy and Agricultural Lands Act (Bom. 67 of 1948), which read as follows :

> "The Provincial Government may, by notifica- tion in the Official Gazette, fix a lower rate of the maximum rent payable by the tenants of lands situate in any particular area or may fix such rate on any other suitable basis as it thinks fit."

This Court, on a consideration of the preamble of the statute and its relevant provisions came to the conclusion that the power delegated to the Provincial Government by s. 6 (2) was not vitiated by excessive delegation. It will be noticed that the terms of the section quoted above had given much wider powers to the executive. But the Court pointed out that the legislature enunciated its policy and laid down the principle for the guidance of the delegate in clear terms, and that, therefore, the impugned provisions of the Act in that case did not suffer from the vice of excessive delegation.

But strong reliance was placed on behalf of the petitioners on the decision of this Court in Hamdard Dawakhana (Wakf) Lal Kuan, Delhi v. Union of India (2). In that case the provisions of cl. (d) of s. (3) of the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954 (21 of 1954) were (1) [1961] 1 S.C.R. 341.

(2) [1960] 2 S.C.R. 671, struck down as having conferred uncanalised and uncontrolled power on the executive. In that case, the whole Act had been challenged as having infringed the fundamental rights of a citizen under Art. 19 (1) (a) & (g). This Court upheld the constitutionality of the Act as a whole, in view of the scope and object of the Act, which was not to interfere with the right of freedom of speech but had reference to trade and business. This Court held that the provisions

attacked on those grounds were reasonable restrictions on the rights of a citizen to carry on any trade or business. But this Court held further that the words "or any other disease or condition which maybe specified in the rules made under this Act" in cl. (d) of s. 3, which empowered the Central Government to add to the list of diseases falling within the mischief of s. 3 suffered from the vice of excessive delegation. This Court struck down that portion of the sub- section as, in its opinion, the words impugned were vague and Parliament had not established any criteria nor laid down any standards nor prescribed any principle on which a particular disease or condition was to be specified in the Schedule. It is clear that the last mentioned case illustrates the rule that the question whether or not a particular piece of legislation suffers from the vice of excessive delegation must be determined with reference to the facts and circumstances in the back-ground of which the provisions of the statute impugned had been enacted. If, on a review of all the facts and circumstances and of the relevant provisions of the statute, the Court is in a, position to say that the legislature had clearly indicated the underlying principle of the legislation and laid down criteria and proper standards but had left the application of those principles and standards to individual cases in the hands of the executive, it cannot be said that there was excessive delegation of powers by the legislature. On the other hand, if a review of all those facts and circumstances and the provisions of the statute, including the preamble, leaves the Court guessing as to the principles and standards, then the delegate has been entrusted not with the mere function of applying the law to individual cases, but with a substantial portion of legislative power itself. Applying those principles which are now well-established by quite a number of decisions of this Court, can it be said in the instant case that the. legislature had not indicated clearly the principles underlying the legislation and the standards to be applied ? In our opinion, the answer must be an emphatic "No".

It was next contended that the Act was intended by Parliament to apply to employees who were mere wage-earners and not to salaried servants, and that in the instant case, the employees of the petitioners were not mere wage-earners. It is a little difficult to appreciate the distinction sought to be made. Both 'Salary' and 'Wages" are emoluments paid to an employee by way of recompense for his labour. Neither of the two terms is a 'term of art'. The Act has not defined wages; it has only defined "basic wages" as all emoluments which are earned by an employee while on duty or, on leave with wages in accordance with the terms of the contract of employment and which are paid or payable in cash to him, but does not include....., "(s. 2(b). (Exclusions are not relevant for our present purposes and, therefore, need not be read.) 'Salary', on the other hand, is remuneration paid to an employee whose period of engagement is more or less permanent in character, for other than manual or relatively unskilled labour. The distinction between skilled and unskilled labour itself is not very definite and it cannot be argued, nor has it been argued.. that the remuneration for skilled labour is not 'wages'. The Act itself has not made any distinction between 'wages' and 'salary'. Both may be paid weekly, fortnightiy or monthly though remuneration for the day's work is not ordinarily termed "salary'. Simply because wages for the month run into hundreds, as they very often do now, would not mean that the employee is not earning wages, properly so called. A clerk in an office may earn much less than the monthly wages of a skilled laborer. Ordinarily he is said to earn his salary. But in principle there is no difference between the two. It is, therefore, not established that the Act was not intended to apply to salaried employees, if by salary is meant fortnightiy or monthly wages running into hundreds per month. It is manifest that there is no force in this contention.

It now remains to consider the third and the last contention raised on behalf 'of the petitioners,, namely, that the Act suffers from the vice of discrimination and, therefore, 'infringes Art. 14 of the Constitution. It is even more difficult to understand this contention, because, as already pointed out, the Act applies to all establishments, except those recited in s. 16, which before its amendment by Act 46 of 1960, exempted establishments belonging to Government or to a local authority. But whatever vice there may have been in that provision has been removed by amending the section, which stands after the amendment as under:

> "16 (1) This Act shall not apply-
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> (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
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> (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" 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."

Clause (a) of s. 16, as it now stands, has exempted establishments registered under the Co-operative Societies Act, because it is well-known that it is the settled policy of the Government to foster co-operative societies with a view to their development and growth in the interest of the community. It is not necessary to cite instances where this Court has held that cooperative societies stand on a special footing which distinguishes them from other establishments or corporations. Clause (b) has reference to establishments which have been in existence for less than 3 years or 5 years, as the case may be. That is an understandable classification with a view to save newly started establishments from the additional burden of making contribution to provident fund in respect of its employees. It is clear that the exemption is a short-lived one because with the efflux of 3 or 5 years' period, they will automatically come under the scheme framed under the Act. The operation of s. 17 has already been discussed, and it has already been indicated that an establishment coming under the exemptions granted or to be granted under s. 17 does not mean that the establishment bears less burden of its share of contribution to the fund. It has not been contended before us that the petitioners' establishment does not come within the general rule laid down in s. 1 (3) of the Act or within the scope of the scheme framed under s. 5. It is equally clear that all hotels and restaurants come within' the scope of the notification impugned in this case. Hence, there is absolutely no reason for complaint that the petitioners' establishment of that class has been chosen for hostile discrimination.

As all the contentions raised on behalf of the petitioners fail, the petition is dismissed with costs.

Petition dismissed.