

(1993) 03 RAJ CK 0026
In the Rajasthan High Court
Case No : .C.W.P. No. 778 of 1982

Aditya Synthetics Pvt. Ltd.

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 10-03-1993

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 16, 16(1), 2A

Citation : (1994) 2 LLJ 76 : (1993) 2 RLW 193 : (1993) 3 WLC 1

Hon'ble Judges : K.C. Agarwal, C.J; V.K. Singhal, J

Bench : Division Bench

Advocate : S.K. Singhal, for the Appellant; Narendra Jain, for the Respondent

Final Decision : Allowed

Judgement

V.K. Singhal, J.—In this writ petition filed under Article 226 of the Constitution of India, the only prayer which has been made is that the petitioner should be declared entitled to infancy benefit u/s 16 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, from March 1, 1977.

2. The petitioner-company installed a factory at Parbatsar District Nagpur, for manufacturing synthetic clothes in March, 1977. A notice was issued to the petitioner that the factory established is engaged in a scheduled industry, viz., textiles, under the Act of 1952, and has completed three years from the date of commencement of its production and that it has employed more than 50 employees and as such it was directed to implement the provisions of the Act and the Scheme framed thereunder with effect from March 1, 1980, as per Annexure 1. Subsequently, superseding the earlier letter dated September 16, 1980, another letter was issued on January 26, 1981, in which the petitioner-company was considered as a branch of M/s. Aditya Mills Ltd., Madanganj, Kishangarh. A reply to this notice was sent and it was contended that the petitioner-company and Aditya Mills are two different and separate entities registered under the Companies Act, 1956, and the directors are also neither

common nor interested persons and as such the petitioner-company cannot be considered to be a branch of Aditya Mills Ltd. The contention of the petitioner-company was not accepted and a notice dated December 21, 1981, was sent to the petitioner-company to attend the enquiry where again the objection was raised that the coverage could be only from March, 1980, and the establishment, prior to February 28, 1980 is entitled to infancy benefit. The respondents have placed reliance on the agreement dated November 19, 1976, with Aditya Mills Ltd. on the basis of which they considered the petitioner-company as a branch of the said company. The establishment of the petitioner was held to be covered under the Act from February 22, 1977, and the amount of Rs. 10, 188 was determined u/s 7A of the Act. A letter was written by the Regional Provident Fund Commissioner to the Central Provident Fund Commissioner, New Delhi, dated September 26, 1980, in which it was stated that M/s. Aditya Mills Ltd. was covered under the Code No. RJ/864 and has been supplying raw material, namely, synthetics blended yarn to M/s. Aditya Mills Pvt. Ltd for manufacturing of cloth on the powerlooms installed by the latter establishment on the terms and conditions enumerated in the agreement entered into between both the said establishments on November 19, 1976. It was stressed that from the agreement the establishment, Aditya Synthetics Pvt. Ltd., was set up with the prior arrangement to manufacture cloth for Aditya Mills, a covered establishment, and the clothes so manufactured by it exclusively for Aditya Mills Ltd. and it could not manufacture cloth for any other establishment. A reply was sent by the Central Provident Fund Commissioner, vide letter dated December 31, 1980, to the Regional Provident Fund Commissioner in which the presumption that the petitioner-company is not entitled to infancy period, was upheld.

3. The submission of learned counsel for the petitioner-company that in accordance with the provisions of Section 2A of the Act, where an establishment consists of different departments or branches, whether situate in the same place or in different places, all such departments or branches shall be treated as parts of the same establishment. In the present case it is not a department or branch of any establishment and the different factories have been set up by the different companies and simply because one company is manufacturing the goods exclusively for another company, the benefit of infancy period cannot be denied. The provisions of Section 16(1)(d) contemplate that the Act shall not be applicable to any other establishment newly set up, until the expiry of a period of three years from the date on which such establishment is, or has been, set up. An Explanation has been given in the said clause "Explanation - For the removal of doubts, 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". In the present case, it is not denied that the petitioner has set up a new establishment.

4. Learned counsel for the respondents has submitted that the petitioner-company was previously known as Kishangar Synthetics Pvt. Ltd. and the name was changed to Aditya Synthetics Pvt. Ltd. It is submitted that since Aditya Mills Ltd. was a covered establishment under the provisions of the Act, the petitioner-

company could not get infancy benefit from February, 1977. The petitioner-company was provisionally covered from March 1, 1980, and when the enquiries were made it was found to be a unit of Aditya Mills Ltd., inasmuch as the entire goods were manufactured for that company and under the agreement, the petitioner-company was not entitled to manufacture the goods for any other establishment.

5. Reliance was placed on the decision given in *The Regional Provident Fund Commissioner, Bombay Vs. Shree Krishna Metal Manufacturing Co., Bhandara*, wherein it has been held by the apex Court that Section 2A has been added by Act No. 46 of 1960, which makes it clear that an establishment may consist of the different departments or may have different branches, whether situate in the same place or in different places, and yet all such departments or branches shall be treated as parts of the same establishment. Therefore, the concept of establishment being of such a comprehensive character, the insertion of the word "establishment" in Section 1(3)(a) by the Amending Act of 1956, helps to negative the argument that the factory therein contemplated cannot be a composite factory. A bare perusal of the judgment would show that it was a matter where the factory was engaged in different industrial activities and the four units which were established in the case for (1) manufacturing brass, copper and "kasa" circular sheets and the preparation of utensils therefrom, (2) milling paddy, (3) a flour mill, and (4) a saw mill, were within the same compound and were owned by one company. It was held that the company is a factory and the High Court cannot examine the disputed question of fact with regard to the numbers of the employees engaged by a company and for this reason the judgment of the High Court was reversed. It was a case of a composite factory which was owned by Shree Krishna Metal Manufacturing Co., a partnership firm. The question whether these different units are owned by different companies was neither in dispute nor adjudged upon and, therefore, this judgment has no application to the facts of the present case.

6. Reliance has also been placed on the decision of *R. Ramakrishna Rao Vs. State of Kerala*, wherein it was held by the apex Court that intention behind Section 16 is that breathing time is to be given to a new establishment and when the establishment is an old one the benefit cannot be given. It was held that the language of Section 16(IXb) 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 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 Section 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. It is not alleged that the industry which was set up by the present company is an old unit and, therefore, this judgment has also no application to the facts of the case.

7. Reliance has also been placed on the decision of Union of India (UOI) and Another Vs. Ogale Glass Works, which was again a decision in respect of a composite establishment having different units.

8. We have considered over the matter. There may be different factors which may be taken into consideration and ownership is one of them. It was the burden of the respondents to have proved that u/s 2A, the petitioner-company is a department or a branch of an establishment. For the purpose of an establishment the control, machineries, location, management, finances and other factors have to be taken into consideration besides ownership. If a company has been set up to do the job work which is not even having the common shareholding or directors it could not be said that on account of the job work being done for one particular company which is a different establishment, it would be excluded from the purview of Section 16(1)(d). The only thing which was to be proved was that the establishment must be newly set up. When the words "set up" has been used it refers to the installation or coming into existence of an establishment which may be newly set up. The interpretation which has been taken by the Provident Fund Commissioner does not appear to be in accordance with law and no speaking order has been passed in this regard. For the purpose of claiming the exemption u/s 16 it is for the establishment to discharge its burden, and for bringing a particular establishment within the purview of the Act or to hold that it is a department or a branch u/s 2A of the Act, it is for the respondent to establish its case by relevant evidence in their support. With regard to the validity of the provisions of Section 7A, learned counsel has not pressed in view of the decision already taken on this point by this Court.

9. The matter with regard to the interpretation of the word "establishment" in the Act was considered by the apex Court in The Associated Cement Companies Limited, Chaibassa Cement Works, Jhinkpani Vs. Their Workmen, This was a matter under the Industrial Disputes Act, 1947, and the apex Court took resort to the ordinary industrial or business sense for determining the unity of an industrial establishment. It was observed as under (at page 8):

"If it is strictly unitary in the sense of having one location and one unit only, there is little difficulty in saying that it is one establishment. Where, however, the industrial undertaking has parts, branches, departments, units, etc., with different locations, near or distant, the question arises what tests should be applied for determining what constitutes "one establishment"."

It was further observed (at page 8-9):

"Thus in one case the unity of ownership, management and control may be the important test; in another case functional integrality or general unity may be the important test; and in still another case the important test may be the unity of

employment. Indeed, in a large number of cases several tests may fall for consideration at the same time. The difficulty of applying these tests arises because of the complexities of modern industrial organisation; many enterprises may have functional integrality between factories which are separately owned; some may be integrated in part with units or factories having the same ownership and in part with factories or plants which are independently owned. In the midst of all these complexities it may be difficult to discover the real thread of unity. In an American decision in *Donald L. Nordling v. Ford Motor Company* (1950) 28 ALR 2d. 272, there is an example of an industrial product consisting of 3800 to 4000 parts, about 900 of which came out of one plant; some came from other plants owned by the same Company and still others came from plants independently owned, and a shutdown caused by a strike or other labour dispute at any one of the plants might conceivably cause a closure of the main plant or factory."

10. The Employees' Provident Funds and Miscellaneous Provisions Act, 1952, is applicable to every establishment which is a factory engaged in industry specified in Schedule I and in which 20 or more persons are employed and also to any other establishment employing 20 or more persons or class of such establishments which the Central Government may, by notification in the Official Gazette, specify in this regard. The insertion of Section 2A in the Act by the Act No. 46 of 1960, with effect from December 31, 1960, was for removal of doubt with regard to the definition of establishment as the definition was not in existence till then.

11. The question for determination thus, which arises in the light of the provisions of Section 2A, is whether the unit of the petitioner could be considered to be a branch of Aditya Mills Ltd. There is no supervisory, managerial or financial control or functional integrality between the two. The nature of the goods manufactured are different. Both the companies are separately incorporated under the provisions of the Companies Act and have to pay their own taxes separately on the income earned by them and are owned by different companies. Simply because one company is manufacturing the goods for another company it cannot be held that it is a department or a branch of the said establishment. The provisions of Section 2A can have no application to such separate establishments where beside the separate existence, labour, nature of goods manufactured and the entities have nothing common except that one unit is manufacturing the goods for another. Aditya Mills Ltd. is a manufacturer of yarn which is a raw material for fabric and the petitioner-company is a private limited company which is manufacturing fabric. The shareholdings, directors, management, labour, finances, etc. are said to be different from that of Aditya Mills Ltd. The financial, managerial and functional integrality has not been established by the respondent. On the contrary, it is an admitted position that both the units are owned by different companies and even on the test of ownership they cannot be clubbed together to form one establishment. The very object of inserting the provisions of Section 2A was to cover those units which though having financial,

managerial and functional integrity but were claiming themselves, outside the purview of coverage, which could have been a unit or a branch existing separately.

12. The provisions of Section 16, though they have to be construed strictly, are not to be interpreted contrary to language used in the section. Clause 16(1)(d) excludes the operation of the Act to any other establishment newly set up, until the expiry of a period of three years from the date on which such establishment is, or has been, set up.

13. The fact that the petitioner has set up a new establishment is not in dispute. The exemption is denied on the ground that Aditya Mills Ltd. which is a public limited company manufacturing the yarn was already in existence and, therefore, the benefit cannot be extended to the petitioner-company which is manufacturing the fabric on the ground that the entire fabric is being manufactured by the petitioner-company for Aditya Mills Ltd. The condition in the agreement that the petitioner-company was not manufacturing the fabric/cloth for any other person or company will not exclude the petitioner-company from the infancy benefit which is available u/s 16. Suppose both the companies come to an agreement that the petitioner-company can manufacture the goods for some other company or that Aditya Mills Ltd. is no longer interested in getting the clothes manufactured or there is a breach of the contract, the question which arises for the purpose of interpretation of Section 16(1)(d) is whether an establishment which has newly been set up can be denied the benefit only for the reason that the newly set up establishment manufactures the goods for some old establishment. The interpretation which has been taken by the Provident Fund Commissioner cannot be considered to be in accordance with law as there is no prohibition or disability in the language of Section 16(1)(d) so that the benefit could be denied to the petitioner-company. The petitioner-company has not been incorporated to defeat the object of the Act nor is it such a company which could be denied the benefit whether there is a change of ownership or change of place etc., and is an independent establishment carrying on the business separately even in a commodity which is different from what Aditya Mills Ltd. are manufacturing.

14. In these circumstances, the order passed by the Provident Fund Commissioner is quashed and it is held that the petitioner-company is a separate and independent establishment entitled to the infancy benefit for a period of three years in accordance with the provisions of Section 16(1)(d) of the Act.

15. The writ petition is allowed with no order as to costs.