(1991) 07 OHC CK 0041

In the Orissa High Court

Case No : O.J.C. No. 865 of 1986

Allied Agencies and Others — APPELLANT

Vs

Regional Provident Fund Commissioner — RESPONDENT

Date of Decision : 23-07-1991

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 2A

Citation : (1999) 3 LLJ 215

Hon'ble Judges : B.L. Hansaria, C.J;D.M. Patnaik, J

Bench : Division Bench

Advocate : S.D. Nanda, for the Appellant; P.N. Mohapatra, for the Respondent

Final Decision : Allowed

Judgement

Hansaria, C.J.—The question for determination in this writ application is whether certain M/s. Allied Agencies, M/s. Industrial Brush Manufacturing Company and M/s. Sahoo Chemicals can be regarded to form part of one establishment for the purpose of determining whether they come within the purview of the Employees'' Provident Funds and Miscellaneous Provisions Act, 1952 (for short, ''the Act''). It is an admitted position that if these concerns were not to form part of one establishment, the total number of employees engaged by them would not be 20 because of which the Act would not apply to them. Though there is some dispute that even if these concerns are treated to form part of one establishment, the total number of employees would not come to 20, but then, this being a disputed question of fact and the Regional Provident Fund Commissioner having come to the conclusion on the basis of materials available to him that these concerns at the relevant time had employed 21 persons, we would not re-examine this factual matter. We, therefore, intend to confine our attention to the legal dispute as to whether the aforesaid three concerns form part of one establishment.

2. To examine the aforesaid legal question, we shall have to note in brief the history of these units. M/s. Allied Agencies is a proprietorship concern of opposite party No. 4 Somanath Sahoo and is located at S. 5, Rourkeia. It is a shop

wherein opposite party No. 4 carries on sale of electrical goods including refrigerators. It was started in the year 1969 and registered under the Orissa Shops and Commercial Establishments Act, 1956 bearing registration number 565-C1100. M/s. Industrial Brush Manufacturing Company is also a proprietorship concern belonging to opposite party No. 4, It is located in the Industrial Estate, Rourkeia. This unit was started in 1974. It is engaged in manufacture of industrial brushes and was registered as a commercial establishment under the Orissa Shops and Commercial Establishments Act, 1956 bearing registration number: C11-20-297. It was financed by the Orissa State Financial Corporation as well as banks. M/s. Sahoo Chemicals is a registered partnership firm of which opposite party No. 4 and his wife are the partners. It is a small scale industry and is an approved supplier of sodium silicate to the Rourkeia Steel Plant. It commenced its production on August 15, 1980. It was also financed by the Orissa State Financial Corporation.

3. The Regional Provident Fund Commissioner regarded all the aforesaid concerns as part of one establishment and as he was satisfied that the total number of persons employed combinedly in these three concerns exceeded 20, he held that the provisions of the Act were applicable to the aforesaid composite unit with effect from 4/81 and opposite party No. 4 was under statutory obligation to report compliance of the various provisions of the schemes framed under the Act. The legality of this order has been assailed in this application.

4. A perusal of the impugned order shows that the Regional Provident Fund Commissioner took the view that opposite party No. 4 must have also financed M/s. Industrial Brush Manufacturing Company though some institutions also lent some money to it. In this connection it has been observed that in orderto avoid certain statutory obligations, the arrangement for taking finance from the aforesaid institutions might have been made. The Commissioner concluded by saying that from the report of the Provident Fund Inspector and the written statement of opposite party No. 4, he was of the opinion that M/s. Industrial Brush Manufacturing Company was an offshoot of M/s. Allied Agencies. Same conclusion was arrived at relating to M/s. Sahoo Chemicals. Being of this view and keeping in mind what was stated in Associated Cement Co. Ltd. v. Their Workmen (1960 I LL 1) regarding the factors to be taken note of while deciding whether some units could be said to be part of one establishment, the Regional Provident Fund Commissioner came to the conclusion that the aforesaid three concerns did form part of one establishment.

5. As to when different units/concerns can be said to be part of one establishment was examined in detail by this Court in Orissa Cement Mazdoor Sangh v. State of Orissa (O.J.C. No. 1915 of 1984 disposed of on October 22, 1990). In the aforesaid case, apart from referring to the decision of the Apex Court in Associated Cement Co. Ltd (supra) some other renderings of the Supreme Court were also noted. A perusal of decision would show that unity of ownership, management and control are not always the deciding factors -- what

matters most is functional integrality. In this connection, reference may specifically be made to Isha Steel Treatment, Bombay Vs. Association of Engineering Workers, Bombay and Another, in which it was pointed out in paragraph 7 that unity of ownership, supervision and control and the fact that the conditions of service of the workmen of different factories were substantially identical were not by themselves sufficient in the eye of law to hold that there was functional integrality between the factories. In the aforesaid O.J.C., though Orissa Cement Limited was admittedly the owner of three factories, the same were not regarded to be part of one establishment. One of the important criteria is functional integrality. In so far as this aspect is concerned the same is completely missing in the present case as from the short history of the three concerns noted above, it cannot be said that they are functionally inter-dependent or integrated with each other. Of course, absence of functional integrality would not always lead to the conclusion that different concerns are not part of one establishment. But then, apart from unity of ownership, there must be something more. In the case at hand, we do not find any thread of unity apart from the fact that opposite party No. 4 owns two units and is a partner in the third. As to the view taken by the Regional Provident Commissioner that M/s. Industrial Brush Manufacturing Co. and M/s. Sahoo Chemicals were offshoots of M/s. Allied Agencies as these must have been financed by opposite party No. 4, we would say that there is no material on record to sustain this view. This apart, it is not clinching as would appear from Navi Brothers v. The Regional Provident Fund Commissioner 1977 35 FLR 80, in which it was held that even though a partnership firm may finance and manage different types of business, ail those business units may be completely independent of each other, in which case they cannot be said to be the departments and branches of the partnership firm. Though in this connection our attention has been invited by Shri Mohapatra appearing for the opposite party to Union of India (UOI) and Another Vs. Ogale Glass Works, we would say that what that case has laid down is that if different sections of a company could be regarded to be parts of composite establishment, the provisions of the Act would apply. This legal position is well established. But the question is whether the three units at hand could be regarded as part of one composite establishment.

6. In the present case, what we find is that there is large measure of unity of ownership and perhaps some amount of unity of management and control also; but functional integrality is missing. To start two concerns, namely, M/s. Industrial Brush Manufacturing Co. and M/s. Sahoo Chemicals, finance was obtained from various lending institutions. These concerns were registered separately under the Orissa Shops and Commercial Establishments Act. There is nothing to show if common accounts were being maintained, or if their workmen were inter-transferable. For all purposes, they were being treated by concerned persons as separate establishments. On these facts, we are of the view that they could not have been regarded in law to be part of one establishment. It is not in dispute that if the three concerns are treated as separate units, the number of

employees working under each of them would be far below 20. The provisions of the Act have, therefore, no application to these concerns.

7. In view of what is stated above, the petition is allowed by quashing the impugned order of the Regional Provident Fund Commissioner.