
(1983) 08 KAR CK 0015
In the Karnataka High Court
Case No : Writ Petition No. 1311 of 1983

B. Ganapathy Bhandarkar

APPELLANT

Vs

Regional Provident Fund Commissioner

RESPONDENT

Date of Decision : 24-08-1983

Acts Referred:

Employees Provident Fund and Miscellaneous Provisions Act, 1952 — Section 1 (3) (b),
16 (1) (b)

Citation : (1994) 3 LLJ 1193

Hon'ble Judges : S. Rajendrababu, J

Bench : Single Bench

Advocate : A.J. Holla, for the Appellant; Shylendrakumar, for the Respondent

Final Decision : Allowed

Judgement

S. Rajendrababu, J.—This petition arise a out of certain proceedings under the Employees" Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter called the Act). Respondent, by an order, on the basis of the materials available before him, held that the petitioner started a proprietary trading concern in the name and style "Ganapathy Bhandarkar" at Mangalore in the year 1959, dealing in weighing scales, hardware, etc. The said concern started a branch at Avenue Road, Bangalore, under the same name. Respondent found that the petitioner by using infrastructure, namely, the capital, men, office, etc., of his proprietary concern, which was a trading establishment, started a manufacturing unit in the industrial estate at Mangalore, and on that basis held that the manufacturing unit is an expansion of the economic activity of the trading concern and all the three units (two trading concerns, one at Mangalore and the other at Bangalore and the Factory) formed one establishment for the purpose of the Act and, therefore, the manufacturing unit is not entitled to the infancy benefit. Petitioner, aggrieved by this order, has approached this Court under Article 226 of the Constitution of India.

2. Petitioner contends:

(i) That each of the establishments taken by itself will fall below the minimum numerical strength to attract the Act, and, therefore, the Act is not applicable.

(ii) The conclusions drawn by the respondent do not follow from the material on record and the respondent has imagined more than what is stated in the various documents and the conclusions are mere surmises.

(iii) The factory having been established from 1 September 1975, at any rate is entitled to infancy benefit for the period of five years from that date u/s 16(I)(b) of the Act.

3. On an earlier occasion in Writ Petition No. 16931 of 1980, this Court quashed a similar order and held that the respondent could not come to the conclusion that the three units should be treated as one establishment for the purpose of the Act merely on the basis of common balance-sheet and remitted the matter by directing the respondent to consider the other materials on record such as affidavits and statements and to pass an appropriate order.

4. There is no dispute in this case that the three units are run by one Ganapathy Bhandarkar. But his case is that although he runs three units and though the sales units at Mangalore and at Bangalore may form one establishment for the purpose of the Act, by no stretch of imagination can it be said that the factory which is engaged purely in manufacture of weighing scales could be said to be part of that establishment for the purposes of the Act.

5. The principal question, therefore, that falls for consideration in this case is whether the trading activity carried on at the Man-galore and Bangalore sales units in the one hand and the manufacturing activity carried on at Mangalore on the other constituted together one establishment or not? In ascertaining an answer to such a question the Supreme Court has provided various tests as under in *The Associated Cement Companies Limited, Chaibassa Cement Works, Jhinkpani Vs. Their Workmen*, It is, perhaps, impossible to lay down any one test as an absolute and invariable test for all cases. The real purpose of these tests is to find out the true relation between the parts, branches, units, etc., if in their true relation they constitute one integrated whole, we say that the establishment is one; if on the contrary they do not constitute one integrated whole, each unit is then a separate unit. How the relation between the units will be judged must depend on the facts proved, having regard to the scheme and object of the statute which gives the right of unemployment compensation and also prescribes a disqualification therefore. 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 still in 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.

6. As stated by the Supreme Court in *The Associated Cement Companies Limited, Chaibassa Cement Works, Jhinkpani Vs. Their Workmen*, in order to find out whether different units constitute one establishment, no one test can be

applied. In a given case, integrality of ownership, management and control could be the decisive tests; while in another functional integrality or general unity; yet in another, it may be the unity of employment. To illustrate the effect of this observation a person who is carrying on an activity in selling books engages himself also in the manufacture of furniture, could it be said that the two units together constitute one establishment for the purpose of the Act? The nature of activities carried on in the two establishments in the illustration are entirely different. One is not a feeder to the other, although there may be unity in capital and management, can it be said that the two units in such case together constitute one establishment? It must be held that they are different and distinct unless an interconnection between the two units is established of mutual dependence of one over the other, so that one cannot function al- together or substantially without the other, or at any rate cannot thrive wholly or substantially in the absence of the other; if one unit goes dry, another unit cannot exist and, therefore, the two units must be held to be one. This view receives support from the decision of the Gujarat High Court in *Gujchem Distillers India, Ltd. v. Regional Provident Fund Commissioner* 1986 I LLJ 119. Let us test whether there is any inter dependability between the trading concerns and manufacturing unit so that it had an integrality to constitute one establishment for the purpose of the Act. On the materials on record the following conclusions are drawn by the respondent:

- (i) the establishment of Ganapathy Bhandarkar at the relevant time had common telephone, common code for telegram/cable; common trade mark, common goodwill and a common emblem;
- (ii) it has common accounts for the entire establishment with a common manufacturing, trading, profit and loss account and common balance-sheet; and
- (iii) that the entire transaction of Ganapathi Bhandarkar, Gokkarakeri, Mangalore-1, including those of the factory had gone into the balance sheet in" which amounts spent for purchase of machinery, etc., for the factory and the profits of both the sales and factory, sides are reflected.

These conclusions will at best show that there is common control in finance and administration, but does not establish that one unit is dependent on the other nor the activities are common much less that the sales units carry on dominantly the activity of the sales of the weighing machines manufactured by the petitioner. There is enough material on record to show that the dominant activity is trading and selling and not manufacture of weighing scales.

7. The respondent has brushed aside this aspect of the matter by relying upon a decision of the Bombay High Court in *Varjivandas Hirji and Co. Vs. D.T. Ghatpande and Another*, . That was a case where the only controversy was whether the petitioners are a trading and a commercial establishment coming under a notification issued u/s 1(3)(b) of the Act and even if they are such establishment, the said notification does not apply to them which are factories.

Petitioners in that case were engaged in the manufacture of asafoetida and gum and they were also dealers in asafetida and gum. That contention was raised in the context that they were selling goods manufactured by themselves and, therefore, there is no commercial activity and hence did not fall within the scope of the notification. It was, therefore, contended that that was not a case coming u/s 1(3)(b) of the Act but u/s 1(3)(a) of the Act. Learned Judges of the Bombay High Court repelled this contention relying on an unreported decision of the Supreme Court in *Basantlal Jain v. Regional Provident Fund Commissioner* (Writ Petition No. 86 of 1967). In that case, the facts were that the petitioner was carrying on activity in two branches wherein in one branch he prepared sweetmeats and sold in the other. The Supreme Court held one is feeder activity to the other and there can be no difference between the two and one is a branch of the other and hence it comes within the scope of Section 1(3)(a) of the Act. Applying this principle to the facts of the case, it was held that the two establishments constitute one unit. But the controversy in this case is altogether different and one activity is not a feeder to the other.

8. Learned counsel for the respondent relied upon a decision of this Court in *C.P. Bhandhari v. Regional Provident Fund Commissioner* [Writ Petition no. 7321 of 1981, decided on 13 August 1981], to contend that the three units in this case constitute one establishment. That was not a case where the petitioner contended that there is no unity of finance or unity of management and control among the three units but that units are situated in different places and employees are not transferable and they have separate export licence for stainless steel utensils. Considering that the activity carried out raw material utilised and produces manufactured being identical and there being common finance and administrative control, the Court held that altogether they constitute one establishment. That was a clear case of functional integrality and, therefore, that decision can have no application to the facts of the present case.

9. The only aspect considered by the respondent-Regional Provident Fund Commissioner in this case is that there is only one common proprietor and, therefore the units must be treated as one establishment irrespective of the nature of the activities carried on in the two establishments and in the absence of any other inter dependability or interlink between the establishments in so far as the functional aspects are concerned. Thus, there is an error apparent on the face of the record in, not applying proper tests to the facts of the case. In the circumstances, this petition has got to be allowed and the order made at annexure A shall stand quashed. It is, however, made clear that it is open to the respondent to examine whether even after treating the trading establishments as separate and distinct from the manufacturing unit, the Act is applicable and from what date, as I have not examined these questions in this case. Rule made absolute accordingly.