
(2008) 04 RAJ CK 0057
In the Rajasthan High Court

Bennett, Coleman and Company Ltd.	APPELLANT
Vs	
Regional Provident Fund Commissioner and Others	RESPONDENT

Date of Decision : 11-04-2008

Acts Referred:

Constitution of India, 1950 — Article 227
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 16, 7A
Industrial Disputes Act, 1947 — Section 2, 25FFF, 2A, 33, 33A

Citation : (2008) 3 LLJ 782 : (2008) 3 RLW 2300

Hon'ble Judges : Narayan Roy, C.J.; Mohammad Rafiq, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Mohammad Rafiq, J.—These three appeals are directed against the common judgment dated 20.11.2006 passed by the learned Single Judge whereby and whereunder three writ petitions preferred by the appellants herein have been dismissed together.

2. The appellants had in the writ petition questioned the validity of the order dated 4.10.1990 passed by the Regional Provident Fund Commissioner holding them not entitled to infancy period and the order dated 10.10.1997 passed by the Employees Provident Fund Appellate Tribunal, New Delhi dismissing their appeals there against.

3. Factual matrix of the case giving rise to these appeals is that M/s. Bennett, Coleman & Company Ltd., Jaipur i.e. appellant in D.B. Civil Special Appeal (Writ) No. 1227/07 entered into two separate agreements with the other two appellants; namely-Times Publishing House Ltd., Jaipur in D.B. Civil Special Appeal (Writ) No. 1228/07 and M/s.) Shree Vishal Printers Ltd., Jaipur in D.B. Civil Special Appeal (Writ) No. 1229/07. M/s. Bennett, Coleman & Company Ltd. is the publisher of daily newspapers "Times of India" and "Nav Bharat Times" published from different places in the country. An agreement was executed between M/s. Bennett, Coleman & Company Ltd. and M/s. Shree Vishal Printers

on 1.10.1985 inter alia for the purpose of getting the newspapers i.e. "Times of India" and "Nav Bharat Times" printed on contract basis. It was agreed that all the material used for printing shall be to the account of M/s. Shree Vishal Printers who shall employ necessary personnel for photo composing, proof reading, camera work, processing, page make-up, plate making and printing activities for which purpose news items, other materials and advertisements to be printed in various editions shall be provided by M/s. Bennett, Coleman & Company Ltd. In consideration thereof, M/s. Bennett, Coleman & Company Ltd. agreed to pay to M/s. Shree Vishal Printers an amount of Rs. 24,000/- as charges for printing per day. In the second agreement entered into between M/s. Bennett, Coleman & Company Ltd. and Times Publishing House, a company incorporated in New Delhi but also having its office at 8-9, Anupam Chambers, Tonk Road, Jaipur; The agreement stated that M/s. Bennett, Coleman & Company Ltd. which is owner, printer and publisher of english daily "The Times of India" published from Bombay, Delhi, Ahmedabad, Bangalore, Patna and Jaipur and hindi daily "Nav Bharat Times" published from Bombay, Delhi, Patna and Jaipur had commenced publication of Jaipur edition of its above referred to daily newspapers w.e.f. 23.9.1985. Times Publishing House agreed to provide office space for use and occupation by the staff of M/s. Bennett, Coleman & Company Ltd., accounting facilities for maintenance of Circulation Accounts, Advertisement Accounts, General Accounts etc. and other facilities like stenography, typing, security, telephone and the like with a view to enabling M/s. Bennett, Coleman & Company Ltd. to efficiently and smoothly conduct its Jaipur operations. Times Publishing House further agreed to render/provide secretarial, administrative, accounting and other clerical and sub-staff facilities. The agreement further provided that the entire infrastructure of Times Publishing House shall be made use of by M/s. Bennett, Coleman & Company Ltd. and in case of working problems, Times Publishing House shall on request of M/s. Bennett, Coleman & Company Ltd. remove the same. Further it was agreed that the staff employed by Times Publishing House shall not be considered as employees of M/s. Bennett, Coleman & Company Ltd. and shall be responsible to the former only. In consideration of this, M/s. Bennett, Coleman & Company Ltd. shall pay an amount calculated at the rate of 5% as commission on net advertisement and circulation revenue.

4. The Regional Provident Fund Commissioner Jaipur by his letter dated 18.6.1986 intimated the appellants to comply with the provisions of Employees Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as "the Act"). He proceeded on the assumption that M/s. Bennett, Coleman & Company Ltd. through its Executive Director Ramesh Chandra as lessee took over a two storied building at 8-9, Anupam Chambers, Tonk Road, Jaipur by lease deed dated 1.12.1983. The Regional Provident Fund Commissioner in his order passed on 4.10.90 held that the above referred to three establishments are all one. Being aggrieved by that order, the appellants filed representation before Legal Advisor, Government of India, Ministry of Labour, New Delhi claiming

benefit of infancy period. While the said representation was pending, the Employees Provident Appellate Tribunal was constituted in the meantime and this representation was therefore transferred to the said Tribunal which was treated as an appeal u/s 19A of the Act. The Appellate Tribunal by its order dated 10.10.1997 however dismissed the petition/appeal preferred by the appellants. Thereafter, three writ petitions filed against that order were dismissed by learned Single Judge by the impugned judgment. Hence these appeals.

5. Mr. A.K. Bhandari, learned Senior Advocate appearing for the appellants argued that the appellant M/s. Bennett, Coleman & Company Ltd. had the establishment at Jaipur which started its business in the year 1985. It was an independent unit and was entitled to benefit of infancy period u/s 16 of the Act. It was not under any obligation to deposit the PF contribution for a period of three years from the date of starting business. Its Jaipur establishment was managed independently and was not depended upon the registered office or on any other establishment of the appellants. It maintained separate profit and loss account and employed independent staff especially for Jaipur. Their salary including incidental expenses were paid from the accounts of Jaipur establishment. They were governed by separate sets of rules and regulations. The Provident Fund Commissioner and the Appellate Tribunal without considering all these aspects required them to comply with the provisions of the Act. In the proceedings initiated u/s 7A of the Act, the Commissioner failed to consider several documents produced by the appellant to show that its Jaipur establishment was an altogether independent office having separate identity. There was no unity of purpose between M/s. Bennett, Coleman & Company Ltd., and other two companies referred to above, nor was there any unity of ownership or unity of management and control or unity of finance or unity of labour or unity of employment or inter-dependence amongst them. They were separately registered as different companies. The documents evidencing all these facts produced before the Commissioner were illegally ignored. The Tribunal also committed same error by not considering, discussing and deciding all these aspects of the matter. The finding that Promoters, Shareholders and Directors of Times Publishing House and M/s. Shree Vishal Printers are members or the relatives of Promoters and Directors of M/s. Bennett, Coleman & Company Ltd. was absolutely without any basis. The learned Single Judge erred in law in not interfering with such finding by wrongly relying on the ratio of Supreme Court judgment in *Sadhana Lodh v. National Insurance Co. Ltd.* (2003) 3 SCC 525 : (2008(3) RLW 2298). A finding of fact which is not supported by any evidence whatsoever would constitute error apparent on the face of record warranting interference by this Court in its jurisdiction under Article 227 of the Constitution of India. The Commissioner and the Appellate Authority erred in law in holding that the agreements executed between M/s. Bennett, Coleman & Company Ltd., and Times Publishing House and M/s. Shree Vishal Printers, were sham transactions. All the three companies were having their different Board of Directors. The authorities below erred in law in holding that upon piercing the

veil, there was found a functional unity amongst the three companies. But it has not been recorded as to how the piercing was done and how the authorities below came to such a conclusion. There was no functional integrity nor was there any functional dependence. All three units were having independent existence and are existing without the other.

6. Mr.AK. Bhandari, learned Counsel for the appellant relied on the judgments of Supreme Court in Management of Pratap Press, New Delhi Vs. Secretary, Delhi Press Workers' Union and Its Workmen, , Aditya Synthetics Pvt. Ltd. v. Union of India and Anr. 1993(1) RLR 603 : (1993 (2) RLW 193) , Isha Steel Treatment, Bombay Vs. Association of Engineering Workers, Bombay and Another, , District Transport Manager (Admn.), O.S.R.T.C., Orissa Vs. Dilip Kumar Nayak and Another, , Smt. Shail Vs. Shri Manoj Kumar and Others, and Sriram Industrial Enterprises Ltd. Vs. Mahak Singh and Others,

7. On the other hand, Mr. K.B. Mathur, learned Counsel for the respondents opposed the appeals and argued that the Regional Provident Fund Commissioner had rightly held that the Jaipur establishment of the appellant M/s. Bennett, Coleman & Company Ltd. is part and parcel of its establishment which was owner, printer and publisher of "Times of India" published from Mumbai, Delhi, Ahmedabad, Bangalore, Patna. The Commissioner, Regional Provident Fund and the Appellate Authority have recorded ample reasons for their satisfaction that there was functional Integrity and unity of purpose among the three different companies. It was argued that M/s. Bennett, Coleman & Company Ltd. in its agreement dated 1.10.1985 has clearly admitted that Jaipur establishment is its own branch. The Commissioner therefore rightly recorded the finding of fact that Jaipur establishment is no more than a branch of another establishment which is already covered under the provisions of the Act. The agreement entered into between M/s. Bennett, Coleman & Company Ltd. with the other two companies clearly prove their functional dependency on one another and also functional integrity and unity of purpose. It was argued that the very fact that entire news items, other printing material and advertisements were supplied to M/s. Shree Vishal Printers for printing and that it was working only for M/s, Bennett, Coleman & Company Ltd. and not for any other concern and further that the entire staff said to have been provided to M/s. Bennett, Coleman & Company Ltd. by Times Publishing House, was under effective control and supervision of M/s. Bennett, Coleman & Company Ltd. and entire establishment expenses were borne by it, clearly prove the functional integrity and unity of purpose among three companies. Mr. R.B. Mathur, learned Counsel for the respondents relied on the judgments of the Supreme Court in Regional Provident Fund Commissioner, Jaipur Vs. Naraini Udyog and Others, Rajasthan Prem Krishan Goods Transport Co. v. Regional Provident Fund Commissioner, New Delhi and Ors. AIR 1997 SC 58.

8. We have given our thoughtful consideration to the arguments advanced by learned Counsel for the parties and perused the material on record.

9. The order of the Regional Provident Fund Commissioner passed u/s 7A of the Act clearly show that agreement executed between M/s. Bennett, Coleman & Company Ltd. and Times Publishing House and M/s. Shree Vishal Printers contains admission of M/s. Bennett, Coleman & Company Ltd. that it is the owner, printer and publisher of english daily "Times of India" and hindi daily "Nav Bharat Times" published from Mumbai, Delhi, Ahmedabad, Bangalore and Jaipur. Agreement that was entered by M/s. Bennett, Coleman & Company Ltd. with M/s. Shree Vishal Printers also contained the admission made by M/s. Bennett, Coleman & Company Ltd. that it has commenced publication of the Jaipur edition of Times of India and Nav Bharat Times w.e.f. 23.9.1985. Record also shows that M/s. Bennett, Coleman & Company Ltd. through its Executive Director Ramesh Chandra took over a two storied building at 8-9, Anupam Chambers, Tonk Road, Jaipur as lessee as per the lease deed dated 1.12.1984. Times Publishing House in the agreement entered into with M/s. Bennett, Coleman & Company Ltd. agreed to provide this very premises for use by M/s. Bennett, Coleman & Company Ltd. In the agreement, Times Publishing House admitted having trained and experienced staff and all infrastructural facilities which it offered to provide to M/s. Bennett, Coleman & Company Ltd. The Commissioner in his order noted all such features of the two agreements. He also noted that Shri Sunil Gupta, who is Manager of M/s. Bennett, Coleman & Company Ltd. has signed all the papers relating to not only M/s. Bennett, Coleman & Company Ltd. but also of two other establishments, namely Times Publishing House and M/s. Shree Vishal Printers. He signed on the notice dated 15.2.1988 and 20.2.1988 regarding closer of the office of Times of India and Nav Bharat Times on 16.2.1988 due to Mahashivratri and on 3rd and 4th March, 1988 due to holi and endorsed copies thereof to Production Executive and Tele printer Room of M/s. Shree Vishal Printers. He also issued order on 21.6.1986 to the Establishment Executive of Times Publishing House. Shri Sunil Chhabra, who is Establishment Executive of M/s. Times Publishing House Ltd. used to write his letters on the letter pad of M/s. Times of India as indicated from the letter dated 27.2.1988 where he issued directions to the security persons who are working with M/s. Shree Vishal Printers as well as Times Publishing House. Shri Sunil Gupta also issued directions to Shri R.L. Bhatnagar of M/s. Shree Vishal Printers Ltd. on 9.2.1987 asking him to report at 11.30 AM on next Monday. He also signed a requisition of M/s. Shree Vishal Printers Ltd. dated 7.6.86 and other indents dated 11.5.87 and 13.5.87. Shri Ashok Kumar Dutta, the then General Manager issued direction dated 2.6.88 to Jaipur branch on recruitment policy. Shri Sunil Gupta sought permission, from General Manager of M/s. Times of India, New Delhi on the request of employees of M/s. Shree Vishal Printers to purchase motorbikes. Shri S.K. Tripathi, Establishment Executive of M/s. Bennett, Coleman & Company Ltd. issued an order on the letter pad of M/s. Shree Vishal Printers on 9.10.1986 to confirm Shri J.P. Pareek, P.T.S. Operator (Hindi). The Commissioner also noted that Times of India, Bombay is already a covered unit in the State of Maharashtra and on that basis concluded that Jaipur Branch was its part and parcel. In fact, Times of India, Bombay in its newspaper clearly advertised that it

has started publication of Nav Bharat Times and Times of India from Jaipur w.e.f. 23.9.1985 and had showed the same as its branch in the declaration of ownership published in its newspaper. As per the letters of Times of India, New Delhi dated 2.6.1988 and 7.6.1988, the managerial control of Jaipur edition vests with the Delhi Office of Timers of India. The balance sheet of the Jaipur Office dated 31.7.1986 indicated Rs. 24,00,394.91 against liabilities under the head "Source of Funds" account of branch which may be debited to the books of Jaipur Branch on advice of the Delhi Office. On page 145 of the balance sheet of 31.7.1986, a receipt of branch audit to the statutory auditors of the company says that the provident fund benefits to the employees stated to have been given and maintained at Head Office. The Commissioner also analyzed the documents filed by the parties and found that M/s. Bennett, Coleman & Company Ltd. has admitted having control of the Head Office over the Jaipur Office in regard to transfer and recruitment etc. The lease deed, balance sheet of the company and other records also proved that Jaipur branch of all the three companies referred to above have common premises, common security, common gate, common support, all of which proved functional integrity and supervision and control. With all these evidences on record showing functional integrity and unity of purpose, the mere fact that 1 the Tribunal in its order made any additional observations about some pf the share holders and Directors of the company being common would not dilute the fact that the two agreements referred to above were nothing but sham transactions to avoid the statutory obligation flowing from the Act. The argument that the documents ? produced by the office bearers of the Union should not have been considered also does not merit acceptance because if the genuineness of the documents as such is otherwise not in doubt, they cannot be ignored just because their source of origin is the union of employees of the establishment and not the establishment itself. The object of the Commissioner and for that matter, of the Appellate Tribunal was to arrive at the truth and if in the process of doing so, the documents which are filed even at the Instance of Union of are found to be relevant, their consideration cannot be said to vitiate the order passed by them.

10. Coming now to the case law cited by the learned Counsel for the appellants, we may at the outset, state that since we have now dealt with the merits of the case, we need not discuss much about the scope of interference by this Court with reference to what was decided by the Supreme Court in *Sadhana Lodh*, supra. We shall however only deal with the ratio of the cited precedents on interpretation of Section 7A of the Act.

11. The judgment of the Supreme Court in *Dilip Kumar Nayak*, supra, was delivered in the context of dispute arising out of proceedings u/s 33(1)(a) and 33A of the industrial Disputes Act. The question that was raised was whether pending adjudication of an industrial dispute in relation to an employee of one Zone to another Zone, could an employee be proceeded against in a disciplinary action without the leave of the Industrial Tribunal. It was held that for the purpose of Section 33A, all Zones cannot be considered as an integral unit of a

Corporation. This judgment having been rendered in an altogether different context, its ratio cannot be applied to the facts of the present case.

12. The division bench judgment of this Court in *M/s. Aditya Synthetics Pvt. Ltd.*, supra, turned out on its own facts where the Court on the basis of evidence that had come on record held that while one company was public limited company, another company sought to be clubbed therewith was a private company and that they could not be clubbed just because one had entered into an agreement with the other for supply of its manufactured goods.

13. The Supreme Court in *Isha Steel Treatment, Bombay*, supra, also was dealing with a case where question was with regard to the closer of one of the two units and provisions of Section 25FFF and Section 2(cc), (ka) of the Industrial Disputes Act, 1947 fell for consideration of the Court. It was held on facts of that case that two units were separate and independent and closer of one of them was by way of victimizing of workman for trade union activities/The ratio of that judgment can hardly have any application to the facts of the present case.

14. Another judgment of Supreme Court in *Management of Pratap Press, New Delhi*, supra, was also rendered in the context of the claim for payment of bonus to the workmen. It was on the facts of that case it was held that where same owner owned a press and published a newspaper, which was printed in the press and there was nothing to show that the owner has mixed up the capital/profits/labour force of the two units, there was no such functional interdependence between the press unit and paper unit so as to held that the two should be considered as forming one industrial unit. So this was the view taken by the Supreme Court in the context of the claim of bonus. The ratio of that judgment therefore cannot be applied to the facts of the present case.

15. The Supreme Court in *The Associated Cement Companies Limited, Chaibassa Cement Works, Jhinkpani Vs. Their Workmen*, was called upon to decide whether the cement factory and a lime stone quarry situated at two different places could be treated as one establishment. The lime stone quarry was situated at a distance of one and half miles from the cement factory. It was held that there was unity of purpose and functional integrity between quarry and the factory. The Supreme Court held that the tests which could be applied to decide as to what constitutes one establishment would be unity of ownership, unity of management, supervision and control, unity of finance and employment, unity of labour and service conditions, functional integrity, general unity of purpose and geographical proximity.

16. In *The Honorary Secretary, South India Millowners' Association and Others Vs. The Secretary, Coimbatore District Textile Workers' Union*, the Supreme Court again held that several factors are relevant In dealing with such problem. However, significance of several relevant factors would not be the same In each case. Unity of ownership, management and control would be a relevant factor. General unity or functional integrity may also be relevant factor. Unity of finance

may not be an irrelevant factor. Geographical proximity may also be of some relevance. In some cases, the test would be whether one concern forms an integral part of another so that together they constitute one concern. Their Lordships held that the nexus of integration in the form of some essential dependence of the one on the other may assume relevance. Similarly, unity of purpose or design or even parallel or co-ordinate activity Intended to achieve a common object for the purpose of carrying out the business of the one or the other may also assume relevance and importance.

17. The Supreme Court in *Regional Provident Fund Commissioner, Jaipur Vs. Naraini Udyog and Others*, while reversing the judgment passed by this Court and restoring the order passed by the Commissioner in somewhat identical circumstances made similar observations. In that case, the Commissioner found that two units had a common branch at Bombay and common telephone at Kota for residence and factory. Officer of one unit was situated in the premises of the other and accounts of both the units were maintained by the same set of clerks. In those facts, the Commissioner held that both of them constituted one establishment. It was held by the Supreme Court that even if they were separately registered under Factories Act, the Sales Tax Act, the ESIC Act and are located at a distance of 3 Kms., in totality of circumstances, they would still be liable to be treated as some establishment.

18. In *M/s. Rajasthan Prem Krishan Goods Transport Co.*, supra, the Supreme Court on analysis of the findings recorded by Regional Provident Fund Commissioner held that there was unity of purpose of the two units therein on each count in as much as the place of business is common, the management is common and the letter heads bear same telephone numbers and 10 out of 13 partners of the appellant firm are common and further that the trucks plied by the two entities are owned by the partners and are being hired through both the units. It was further found that respective employees engaged by two entities when added together, bring the integrated entities within the grip of Act. On facts it was held that a legitimate inference can be drawn that they were one unit. It was held that Regional Provident Fund Commissioner could "pierce the veil and read between the lines without the outwardliness of the two apparents".

19. when we apply the law as consistently laid down by the Supreme Court in the judgments referred to above, we find that there are some such factors in the case in hand, on the basis of which the legitimate inference could be drawn by the Commissioner that the three companies referred to above have functional integrity and unity of purpose. Mere separate incorporation and registration of these companies under the Indian Companies Act and under very many other enactments, could not make them different units. The Regional Provident Fund Commissioner, in our view, was well within his rights to pierce the veil and read between the lines without the outwardliness of the two apparents. He had ample evidence to arrive at such a satisfaction in the scope of Section 2A read with Section 7A of the Act while deciding the claim of infancy made by the appellants.

20. We therefore do not find any infirmity in the order passed by the Provident Fund Commissioner and Appellate Tribunal and for the same reason, therefore, of the learned Single Judge. We therefore concur with the ultimate decision arrived at by the learned Single Judge in dismissing the writ petition though for different reasons as enumerated hereinabove. All the three special appeals are dismissed accordingly without any order as to costs.