

(1985) 04 MAD CK 0021
In the Madras High Court
Case No : Writ Appeal No. 205/79

D. Appavoo Prop. Chandra Bus Service, Thanjavur	APPELLANT
Vs	
The Regional Commissioner, Provident Funds, Madras	RESPONDENT

Date of Decision : 11-04-1985

Acts Referred:

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

Citation : (1986) 1 LLJ 534 : (1986) 99 LW 85

Hon'ble Judges : Ramanujam, J; M.A. Sathar Sayeed, J

Bench : Division Bench

Judgement

Ramanujam, J.—In this appeal, the decision of Mohan, J. in W.P. No. 2402 of 1976 holding that the appellant concern is not entitled to the

benefit of S. 16(1)(b) of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (Central Act 19 of 1952 hereinafter referred to as the Act), is questioned.

2. The facts giving rise to these proceedings are not in dispute. A transport company by name S. D. Lingam Transport was owned by one

Dharmalinga Mudaliar, the father of the appellant herein. The said firm was operating eight buses. There was a partition between Dharmalinga

Mudaliar and two sons in that partition, two buses with their route permits were allotted to Dharmalinga Mudaliar and three buses with their route

permits were allotted to each of the two sons of Dharmalinga Mudaliar. The appellant, as already stated, is one of the sons of Dharmalinga

Mudaliar to whom three buses with their route permits had been allotted and he continued to operate the three buses on the three route allotted to

him in the partition. Thereafter the appellant sought the benefit of S. 16(1)(b) of

the Act on the ground that there has been a disruption in the continuity of the business and that the business which he is carrying on is a new and separate one and therefore, he is entitled to the infancy benefits for a period of three years as contemplated in S. 16(1)(b) of the Act. The Regional Commissioner, Provident Fund, however, took the view that it is the old transport business that is being continued and therefore, the appellant will not be entitled to the infancy benefits contemplated under S. 16(1)(b). It is at that stage, the appellant herein filed W.P. 2402 of 1976 seeking the issue of a writ in the nature of certiorari to quash the order of the Regional Commissioner dated 12th May, 1976 under which the appellant was called upon to give effect to the Act and the Scheme on pain of coercive proceedings.

3. The writ petition was resisted by the Regional Commissioner on the ground that the partition between the father and the son does not bring about any discontinuity in the business, that the business of transport operation still continued, though the management alone has changed. Originally, the transport operation was carried on in the name of the father and now after the partition, the same transport operation is carried on as three units managed by the father and the two sons and that since there is a continuity of business, it is not possible to invoke S. 16(1)(b) on the facts and circumstances of the case Mohan, J. who disposed of the writ petition, held that there is no setting up of any new establishment and the old establishment continued to function, though the persons in management are now different. In that view, the learned Judge held that S. 16(1)(b) of the Act is not applicable. The correctness of the said decision of Mohan, J. is now questioned in this appeal.

4. Mr. T. Chengalvarayan, learned counsel for the appellant, contends that there has been a disintegration of the business which was run as one unit and that this disintegration should be taken to postulate a new under-taking coming into existence in the hands of each of the three individuals to whom the allotment of the buses was made at the partition. According to the learned counsel, when once there is a bifurcation or a division of the business, then the business, in the hands of the sharers should be taken to be a new business, which has resulted from the closure of the old composite business. It is also pointed out that the homogeneity and integrity of

the old business have been broken and therefore, it should be taken that three new business establishments have been commenced by the shares and that will attract S. 16(1)(b) of the Act.

5. On a consideration of the matter, we are not in a position to agree with the contentions of the learned counsel for the appellant. Though there has been a partition and allotment of the buses the fact remains that the same buses are being operated with the same employees and there is no closure or stoppage of business at any time. It is well established that an establishment not only connotes the persons in management and the owners of the business, but also connotes the assets of the business and the employees who are employed in the business. Here, notwithstanding the partition and allotment of buses to the sharers, the buses continued to operate with the same employees without any alteration in their service conditions. Even assuming as contended by the learned counsel for the appellant that after partition the transport operation which was carried on as one unit had been divided into three units and therefore the integrity and homogeneity should be taken to have been broken, still so long as the business continues as usual without any change either in the assets or in the employees who are involved in the business, the establishment should be taken to be continuing. As pointed out by the Supreme Court in *Sayaji Mills Ltd. v. Regional Provident Fund Commissioner* 1985-I L.L.J. 238, the Act being a beneficent statute and S. 16 of the Act being a clause granting exemption to the employer from the liability to make contributions. S. 16 should receive a strict construction. The criterion for earning exemption under S. 16(1)(b) is that a period of three years has not yet elapsed from the date of the establishment of the factory in question. The partition and allotment of buses to the sharers in this case will merely result in reduced liability for payment of contribution as the individual sharers are now owning only a lesser number of buses and consequently a lesser number of employees working under them. Except for that difference, the business which is being carried on by each of the three sharers cannot be said to be new business establishments because the old business never came to an end. Moreover, if partition and allotment of shares in a business is to be taken as amounting to a closure of the old business and the starting of a new business establishment in the hands of the sharers, then the

provisions of the Act can very easily be defeated by bringing about a partition once in three years, thus depriving the employees of the benefits of the Act. In this view of the matter, we are inclined to agree with the view taken by the learned single Judge. The writ appeal accordingly fails and is dismissed. No costs.