
(1993) 07 KL CK 0059
In the High Court Of Kerala
Case No : O.P.No. 1029 of 1983

Eddy Current Controls India

APPELLANT

Vs

The Regional Provident Fund Connor, and another

RESPONDENT

Date of Decision : 09-07-1993

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 1, 1(3), 1(3)(a), 16, 2(g)
Payment of Bonus Act, 1965 — Section 3

Citation : (1993) 2 KLJ 628

Hon'ble Judges : T.L. Viswanatha Iyer, J;P. Krishnamoorthy, J

Bench : Division Bench

Advocate : S. Sirijagaan, for the Appellant; George C.P. Tharakan (Sr. Central Govt. Counsel), for the Respondent

Final Decision : Dismissed

Judgement

Krishnamoorthy, J.—Petitioner is a Company registered under the Companies Act, 1956 having its registered office at Eddypuram, Chalakudy in Trichur District. It is engaged in the business of manufacture of eddy current clutches and motors. Petitioner - Company owns and maintains two factories, one at Chalakudy in Kerala and the other at Coimbatore in the State of Tamil Nadu. The factory at Chalakudy was established in the year 1974 and the factory at Coimbatore was established in 1979. According to the petitioner, these two factories are established and registered separately and independently under the Factories Act and they are having separate registration and licences under the Central Excise Act and the Sales Tax Acts of the respective States. Separate accounts are maintained in regard to the factories and balance-sheets are also prepared separately, The installed capacity of the Chalakudy factory is 500 HP and that of the Coimbatore factory is only 32.45 HP. The employees of the two factories are not mutually transferable. The factory at Coimbatore is having only 16 employees. The Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as "the Provident Funds Act") was made

applicable to the factory at Chalakudy with effect from 31-12-1976, under Sec. 1 (3) (a) of the said Act. It is applicable only to the factory owned by the petitioner and not to the petitioner - Company as such. The petitioner-Company was informed by the Regional Provident Fund Commissioner, in July, 1980 that the factory at Coimbatore is a branch unit of the Company and is liable to pay provident fund contribution under the Provident Funds Act, by virtue of Sec. 2A of the said Act; copy of that letter is produced as Ext. P 3. To Ext. P 3 the petitioner submitted a detailed objection evidenced by Ext. P4 dated 26-7-1980. By his order dated 20-8-1982, produced as Ext. P 5, the Regional Provident Fund Commissioner (1st respondent) rejected the objections of the petitioner and directed the petitioner to implement the provisions of the Act and the Scheme in respect of the Coimbatore factory with effect from the date of starting of the factory.

2. Aggrieved by the said order the petitioner filed a representation before the 2nd respondent under Sec. 19A of the Provident Funds Act; the representation is produced as Ext. P 6. The 2nd respondent confirmed the order of the 1st respondent by Ext. P7 order dated 17-11-1982 holding that the Coimbatore factory is only a branch of the Chalakudy establishment and that the petitioner is liable to contribute to the Fund in respect of both the factories.

3. Petitioner is challenging Exts. P5 and P7 orders as illegal and vitiated by an error of law. It is contended that the Coimbatore factory should be considered as a factory established separate and independent of the Chalakudy factory and since the Coimbatore factory does not employ 20 or more persons, it is not liable to be covered under the Act. It is further contended that Sec. 2A of the Provident Funds Act has no application to the petitioner's factories as the factory at Coimbatore is not a branch or department of the Chalakudy factory, as defined in Sec. 2A of the Act. Petitioner further contends that the fact that the two factories are owned by the petitioner by itself will not make one factory a branch or department of the other so as to come within the purview of Sec. 2A of the Provident Funds Act. According to the petitioner, the respondents have misconstrued and misunderstood the provisions of Sec. 2A and have erroneously applied that Section in holding that the Coimbatore factory is a branch of the Chalakudy factory. The fact that the two factories are separately registered and have separate licences and that there is no interdependence between the two establishments is relevant for determining whether one is a branch of the other. On these grounds the petitioner prays for quashing Exts. P5 and P7 orders and to declare that the factory at Coimbatore is not liable to be covered as a branch or department of the factory at Chalakudy under the Provident Funds Act.

4. In the light of the contentions raised by the petitioner the question that arises for consideration is regarding the ambit and interpretation of Sec. 2A of the Provident Funds Act read with Sec. 1(3)(a) and (b) thereof. In the Provident Funds Act there is no definition of an establishment, but factory has been defined in Sec. 2 (g) as follows :-

"factory" means any premises, including the precincts thereof, in any part of which a manufacturing process is being carried on or is ordinarily so carried on, whether with the aid of power or without the aid of power.

It is further seen that under sub - sec. (3) of Sec. 1 of the Provident Funds Act applies (a) to every establishment which is a factory engaged in any industry specified in Schedule, I and in which twenty or more persons are employed, and (b) to any other establishment employing twenty or more persons or class of such establishments which the Central Government may, by notification in the Official Gazette, specify in this behalf. There is a proviso to Sec. 1(3) which is not very relevant for the purpose of this case. Sec. 2A inserted in the Act by amending Act 46 of 1960 reads as follows :-

For the removal of doubts, it is hereby declared that where an establishment consists of different departments or has branches, whether situate in the same place or in different places, all such departments or branches shall be treated as part of the same establishment.

On a reading of Sec. 2A it is clear that if an establishment consists of different departments or has branches, whether situate in the same place or in different places, such departments or branches shall be treated as part of the same establishment. The question to be decided is as to whether the Coimbatore factory is a branch or department of the establishment at Chalakudy.

5. It is an admitted fact that the industry in which the petitioner is engaged in both the factories is one specified in Schedule I to the Act. A department of an establishment is intimately linked with the establishment and therefore it may not be difficult to find out whether a part of an establishment is a department of that establishment. For example, if one factory is ultimately manufacturing the end product and there are other factories which manufacture the component parts necessary to constitute the end product, such factories can be said to be a department of the other establishment wherein the end product is ultimately produced - In that view of the matter, there may not be any difficulty in finding out whether one establishment is a department of the other. But the difficulty arises in finding out whether one establishment is a branch of the other. That will depend upon the facts of each case. In a case under the Industrial Disputes Act, *Associated Cement Companies Ltd. v. Their Workmen* (1960-I LLJ 1) the Supreme Court said;-

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". Several tests were referred to in the course of arguments before us, such as, geographical proximity, unity of ownership, management and control, unity of employment and conditions of service, functional integrality, general unity of purpose etc. . .

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 therefor. 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.

6. On the basis of the principle laid down by the Supreme Court as above, if the branch of an establishment taken with the establishment forms one industrial establishment, Sec. 2A of the Provident Funds Act will be attracted and by the above Section the employees in the branch will also come within the purview of the Act. Sec. 2A specifically provides that if an establishment consists of different departments or has branches, they shall be treated as part of the same establishment so that for the purpose of determining the liability the main establishment as also its branch has to be taken as one unit. This seems to be the correct principle to be applied in such cases. When once an establishment comes within the purview of the Act by virtue of the provision contained in Sec. 13) (a) the employer becomes liable to contribute to the Provident Fund for the employees.

7. In a Division Bench decision of this Court in *Ramunni v. The Regional Provident Fund Commissioner* (ILR 1974(1) Kerala 11) the facts were as follows : The appellant-petitioner was engaged in manufacturing biscuits. He had three factories at Tellicherry, Palghat and Trichur where he was manufacturing biscuits. The industry in which the appellant was engaged was one specified in Schedule I to the Act. In that case, in the factories at Tellicherry, Palghat and Trichur, only less than 20 persons were employed and the question arose as to whether for the purpose of liability under the Provident Funds Act all the three factories have to be taken as one unit or it has to be taken as three independent units. If they are taken as one unit, the establishments will come within the purview of the Act and if they are independently taken, they will be outside the purview of the Act. The question that arose in that case was as to whether the factories at Palghat and Trichur were only branches of the establishment at Tellicherry. Considering that question the Division Bench held: -

If the activities carried on in the branches or even departments, are not such as would fall under the Act, then the branches and the departments must normally be outside the Act. But if the branches and departments form an intimate part of the establishment, in which an activity specified in Schedule I to the Act is carried on as to form an integral whole, with the establishment on the principles

laid down for holding that the establishment with the departments and branches really make "one industrial establishment", then and then only, will the branches and departments and the employees therein come within the purview of the Act. That is the effect of Section 2A.

Again, after referring to the decision of the Supreme Court in *The Associated Cement Companies Limited, Chaibassa Cement Works, Jhinkpani Vs. Their Workmen*, it was further held:

If, by applying the principle laid down by the Supreme Court in this case, it is possible to say that the branch of an establishment taken with the establishment forms one industrial establishment, section 2A will be attracted and by its application the branch and the employees in the branch will also come within the purview of the Act.

8. It is in the light of these principles that we have to consider the question as to whether the two establishments of the petitioner -Company, one at Chalakudy and the other at Coimbatore, form part of a single unit for the purposes of the Act or whether they are independent units. On the facts found by the Regional Provident Fund Commissioner as also by the Government of India, it is clear that the factories at Chalakudy and Coimbatore are owned by the petitioner - Company. The product manufactured in the two factories is the same, namely eddy current clutches and motors, specified in Schedule I to the Act. The fact that only a motor with a lesser horse power is manufactured at Coimbatore is irrelevant. The registered office is the same for the factory at Coimbatore. The factory at Coimbatore has been described by the Company as a unit and the activity carried on there is the same as that of the factory at Chalakudy. The balance - sheet, profit and loss account, income and expenditure account are all common for all the units of the Company as per the Eighth Annual Report of the Company for the year ending 30th June, 1979. Three employees from the Chalakudy unit are employed in the Coimbatore unit and their salary and provident fund are paid from Chalakudy unit. As per the balance-sheet during 1978-79, an amount of Rs. 33,331.25 has been transferred to the Head Office accounts from the Coimbatore unit and a sum of Rs. 6,41,219.05 has been transferred during 1979-80. The Cash Book further shows that a sum of Rs. 20,000/- has been transferred to the Coimbatore unit on 21-12-1981 by telegraphic transfer. The profit and loss account shows that raw-materials worth Rs. 2,16,973.76 has been transferred from the Head Office to the Coimbatore unit in 1980-81. The same Managing Director, Finance Manager and Secretary are the persons empowered to operate the bank accounts of both the factories. Thus it is clear that there is financial and functional dependency between the two units. There is unity of ownership, management, supervision and control and general unity of purpose. It is further to be noted that the factories at Chalakudy and Coimbatore are manufacturing the same product. Thus it can be seen that there is unity of production as well. Judged in the light of the above facts, we are in complete agreement with the view taken by respondents 1 and 2 that the

Coimbatore factory is only a branch of the establishment and is not an independent unit.

9. Counsel for the petitioner relied on two decisions of the Supreme Court which arose under the Payment of Bonus Act. reported in *Messrs Alloy Steel Project v. The Workmen* (1971-1 LLJ 217) and *Workmen of H.M.T. v. National Tribunal* (1973-11 LIJ 100). The question that arose for consideration in the former case was as to whether Messrs-Alloy Steel project is to be treated as a separate establishment or is to be treated as part of the main establishment owned by Hindustan Steel Ltd. It was argued on behalf of the workers that by virtue of Sec. 3 of the Payment of Bonus Act, the Alloy Steel project has to be treated as the same establishment as it is only a branch of the Hindustan Steel Limited. In the latter case the question arose as to whether the units of Hindustan Machine Tools in different parts of India were part of the same establishment or not under the Payment of Bonus Act. In both the decisions on an interpretation of Sec.3 of the Payment of Bonus Act the Supreme Court held that they are independent units. But before understanding the ratio of the decisions it is necessary to quote Sec. 3 of the Payment of Bonus Act, 1965 which reads:

3. Establishment to include departments, undertakings and branches :-- Where an establishment consists of different departments or undertakings or has branches, whether situated in the same place or in different places, all such departments or undertakings or branches shall be treated as parts of the same establishment for purpose of computation of bonus under this Act:

Provided that where for any accounting year a separate balance-sheet and profit and loss account are prepared and maintained and in respect of any department or undertaking or branch, then, such department or undertaking or branch shall be treated as a separate establishment for the purpose of computation of bonus under this Act for that year, unless such department or undertaking or branch was, immediately before the commencement of that accounting year treated as part of the establishment for the purpose of computation of bonus.

On a reading of Sec. 3 it is clear that the principal part of the Section lays down that different departments or undertakings or branches of an establishment are to be treated as parts of the same establishment only for the purpose of computation of bonus under the Act. It is not as if they have to be treated as parts of the same establishment for the purpose of determining the applicability of the Bonus Act under Sec. 1 (3) thereof. Under Sec. 3 of the Payment of Bonus Act branches and departments are to be treated as parts of the same establishment only for the purpose of computation of bonus whereas under Sec. 2A of the Provident Funds Act they have to be treated as parts of the same establishment for all purposes. Moreover, a special provision is made in the proviso to Sec.3 of the Payment of Bonus Act in, regard to any department, undertaking or branch which maintains a separate balance-sheet and profit and loss account for any accounting year, which is absent in Sec. 2A of the Provident Funds Act. In the case reported in 1971-1 LIJ 217 the Supreme Court decided

the matter on the basis that Sec. 3 of the Payment of Bonus Act is relevant only for the computation of bonus and not to determine the question as to whether one establishment forms part of another or not for the purpose of applicability of the said Act. In 1973-11 LLJ. 100 the Supreme Court relied on the proviso to Sec. 3 and came to the conclusion that the two establishments with which they were concerned are different and separate. The wording of Sec. 3 of the Payment of Bonus Act and Sec. 2A of the Provident Funds Act are entirely different and the proviso to Sec. 3 is absent in Sec. 2A. In that view of the matter, these two decisions of the Supreme Court, relied on by counsel for the petitioner, can have no application to the case on hand.

10. In *Mahipal Singh v. R.P.F. Commissioner* (1972 Lab. I. C. 1202) the Karnataka High Court, on the facts of that case and on the basis that there is no finding that they are branches, held that the three concerns are different and cannot be treated as parts or branches or departments of the same establishment. In the case reported in *M/s. Metazing Pvt. Ltd. v. A. M. Gandhi, R.P.F. Commr.* (1991 Lab. I. C, 2060) the two units were manufacturing different products. So also the decision reported in *B. G. Bhandarkar v. R.P.F. Commr, Bangalore* (1990 (60) FLR (43) shall be confined to its own facts. In *Dharamsi Morarji Chemicals Co. Ltd. v. H. G. Desai* (1985 -I LLJ 433) there is no consideration of the impact of Sec.2A.

11. In *Andhra Cement Co. Ltd. Vijayawada v. R.P.F. Commr., Hyderabad & Another* (1988 - II LLJ. 453) the facts were as follows: The petitioner - Company established a cement factory known as "Andhra Cement Factory" at Vijayawada in the year 1938. In the year 1978 the management established another factory styled "Visakha Cement Works" at Visakha Patnam. The State Government allowed interest - free sales tax loans, a rebate of 25% in power tariff and other facilities as incentives to the new industry. The Commissioner of Labour also recognised it as a separate establishment. The service conditions were totally different from the service conditions of the workmen working in Andhra Cement Factory. The employment was also different. 75% of the wages as recognised by the Central Wage Board was also being paid from 1st November, 1979. The workmen accepted the same. Separate balance sheet and separate accounts are maintained for the new establishment. In 1982 proceedings were initiated by the Andhra Pradesh Regional Provident Fund Commissioner to cover the employees of Visakha Cement Works under the Provident Fund, treating it as part and parcel of Andhra Cement Factory. Thereupon the petitioner-Company made a representation to the Government of India under Sec. 19A of the Provident Funds Act stating that Visakha Cement Works is a new establishment and, therefore, it is entitled for exemption under Sec. 16 of the Act for the infancy benefit of three years. The said representation was rejected by the Central Government and accordingly a writ petition was filed before the Andhra Pradesh High Court, contending that Visakha Cement Works at Visakhapatnam is an independent unit and that it cannot be clubbed with Andhra Cement Factory, Vijayawada. After considering the case law on the question, the Andhra Pradesh High Court held as

follows.-

A broad criteria emerging out of the above conspectus of case law are: In order to hold that different parts, units, branches and so forth are merely constituents of one establishment, the salient features, which are enumerated below, must be satisfied: this is, however, by entering a caveat that no hard and fast rule could be laid down as to how many of the following shall have to be satisfied-in other words each case has to be considered in the light of its own circumstances as to whether it is a new establishment or a branch, part or constituent of the old establishment. There cannot however be a straight jacket formula.

(1) the Unity of ownership, management and control, unity of employment and conditions of service, functional integrality and general unity of purpose.

(2) The connection between the two activities is not by itself sufficient to justify an answer one way or the other, but the employer's own conduct in mixing up or not mixing up the capital, staff and management may often provide a certain answer.

(3) The real purpose of the tests is to find out the true relationship between the two parts, branches, units etc. If they constitute one integrated whole, we say that the establishment is one. If it is to the contrary, then each unit is a separate one.

(4) 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.

(5) 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 the light of the above principles the Andhra Pradesh High Court considered the facts of that case and came to the conclusion that on the facts of that case Visakha Cement Works is a branch of the petitioner-Company, and, therefore cannot claim the benefit of exemption as postulated under Sec. 16 of the Employees' Provident Fund Act for the infancy benefit. It was further held that the fact that Visakha Cement Works has been registered separately, licensed separately, granted interest-free sales tax loans as a rebate of 25% in power tariff cannot be reckoned as contributing factors to be taken as guidelines in finding whether the unit is a separate establishment or a branch of the main unit.

12. We are also of the view that the mere fact that separate licences were obtained under the Factories Act for the two factories in question is not a relevant consideration at all. Applying the principles deducible from the aforesaid decisions to the facts of this case, we are clearly of the view that the Coimbatore

factory is only a branch of the establishment at Chalakudy for the reasons which we have already mentioned. In view of what is stated above, we do not find any ground to interfere with Ext. P5 and P7 orders and accordingly this Original Petition is dismissed, but, in the circumstances, without any order as to costs.