

(1998) 10 KAR CK 0021
In the Karnataka High Court
Case No : Writ Petition No. 25955 of 1991

Gem Properties Private Limited, Tumkur	APPELLANT
Vs	
Regional Provident Fund Commissioner, Bangalore	RESPONDENT

Date of Decision : 27-10-1998

Acts Referred:

Employees Provident Fund and Miscellaneous Provisions Act, 1952 — Section 1 (3) (b), 16 (1) (d), 7 A

Citation : (1999) 82 FLR 414 : (1999) ILR (Kar) 842 : (1999) 2 KarLJ 129 : (1999) 2 LLJ 105

Hon'ble Judges : G. Patri Basavana Goud, J

Bench : Single Bench

Advocate : Sri R. Gururajan, for the Appellant; Sri Harikrishna S. Holla, Central Government Standing Counsel, for the Respondent

Judgement

1. The respondent-Regional Provident Fund Commissioner, after an enquiry u/s 7A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 ("Act" for short), has determined as at Annexure-H, that the petitioner is liable to be covered under the Act with effect from 1-9-1985 in respect of eligible employees. In this writ petition under Article 226 of the Constitution, petitioner seeks quashing of the said Annexure-H.

2. Petitioner was earlier being called as Gem Exports Private Limited and was incorporated as such under the Companies Act, 1956 in the year 1980. It is taken as an admitted position that from 1980 to 1985, petitioner was engaged only in trading and commerce activity which would make it an establishment, to which the Act would apply in view of Section 1(3)(b) of the Act, since admittedly, trading and commerce activity was an activity in respect of which a notification had been issued by the Central Government u/s 1(3)(b) of the Act. The name of the company was changed in due course to one as now available i.e., "Gem Properties Private Limited". As Annexure-A to E would show, in the year 1984, petitioner was allotted an industrial area in Sathyamangala and it was in the year 1985 that the electricity connection was given. Admittedly, from 1985 onwards,

petitioner started manufacturing of HDPE/PP fabrics and sacks, an item covered by Schedule I to the Act. As on 31-8-1985, 60 employees were found to be there. The case of the respondent-Authority is that in view of 20 or more persons thus being found working on 31-8-1985, petitioner is coverable under the Act with effect from 1-9-1985, and, accordingly it has passed the order at Annexure-H.

3. Section 16(1)(d) of the Act as it stood then provided for infancy protection to an establishment newly set up or has been set up for a period of three years from the date on which the said establishment is or has been set up. The case of the respondent, as urged by its Counsel Sri Harikrishna Holla, as regards infancy protection available u/s 16(1)(d) of the Act is this: The petitioner-company, even though had a different name, had been carrying on trading and commerce activities as notified u/s 1(3)(b) of the Act, and as such, was an establishment covered under the Act within the meaning of Section 1(3)(b) right from the year 1980. The fact that it had changed its name in due course and the fact that it changed its activity from one of trading and commerce activity to that of manufacturing process in the year 1985, is of no consequence for the purpose of claiming infancy protection u/s 16(1)(b). So far as the said Section 16(1)(b) of the Act is concerned, infancy period should be computed right from the year 1980 notwithstanding the fact the trading and commerce activity was changed to that of manufacturing activity in the year 1985.

For the petitioner, Sri R. Gururajan, learned Counsel submits thus: The company no doubt had been incorporated in the year 1980. But the specific case of the respondent as made out in the show-cause notice at Annexure-F is that it started its manufacturing process in plastics in the year 1985. Even otherwise, as Annexure-A would show, there was not even a place for the petitioner's factory till 1984, and it was only in the year 1984 that the land was allotted in the industrial area and then in the year 1985 electricity connection was taken, and that it was for the first time in the year 1985 that the industrial production started, and as such, for the purpose of Section 16(1)(b) of the Act, the establishment must be taken as having been set up for the first time in the year 1985, and that the respondent erred in computing the infancy period from the year 1980.

4. The question that, therefore, arises is as to whether infancy period is required to be computed from the year 1980 or from the year 1985. If it is from the year 1980, the impugned order at Annexure-H would be valid. On the other hand, if it is to be computed from the year 1985, Annexure-H would not be legally sustainable.

5. The relevant provision, namely Section 16(1)(b) of the Act, as it stood then, as earlier referred to, refers to an establishment that is or has been set up. Section 1(3) deals with applicability of the Act. Clause (a) to sub-section (3) of Section 1 relates to an establishment which is a factory engaged in any industry specified in Schedule I to the Act and in which twenty or more persons are

employed. Section 2(g) of the Act inter alia defines "factory" as a premises where manufacturing process is being carried out. Petitioner could therefore be said to have been brought within the purview of Section 1(3)(b) of the Act only in the year 1985 when it became a "factory" engaged in an industry specified in Schedule I to the Act by way of manufacturing plastic items and engaging 60 persons as on 31-8-1985. It was, however, an establishment still covered u/s 1(3)(b) of the Act right from the year 1980 because it had admittedly been carrying on trading and commerce activity, that is an item covered by the notification issued by the Central Government u/s 1(3)(b) of the Act. Therefore, petitioner was an establishment covered under the Act right from the year 1980, initially no doubt under clause (b) and later under clause (a) of sub-section (3) of Section 1 of the Act. In the case of *State of Punjab Vs. Satpal and Another*, , the Supreme Court, with reference to the very provision Section 16(1)(b) of the Act, pointed out in paragraph 7 of the judgment, that the law takes into account only the existence of the establishment and the employment of certain number of persons in a factory for over a given period and that it is for this purpose that a change of location or change of composition of partners or even the change in the manufacturing process is not vital in the application of this law. Further, in paragraph 8, the Supreme Court, after explaining the relevant provision and referring to its earlier ruling in *R. Ramakrishna Rao Vs. State of Kerala*, , stated that the word "is" in the sub-section clearly indicated a newly started business and the words "has been", a business which had been in existence before, and, that therefore, it was held that the period of infancy must be calculated from the first establishment of the factory and from the moment of time when the figure of employment of 20 or more workmen is first reached.

6. In *Lakshmi Rattan Engineering Works v Regional Provident Fund Commissioner, Punjab and Others*, the Supreme Court pointed out with reference to the very provision that where a factory manufacturing textile goods and called as a training unit for displaced persons was purchased as a going concern by a private party, the fact that it was previously used for the purpose of training would not make any difference in the date of the establishment of a factory for the purposes of Section 16(1)(d) of the Act.

7. Looking to the facts of the present case in the light of the principles enunciated by the Supreme Court in the above said two decisions, it becomes clear that the petitioner having been incorporated in the year 1980 and having commenced trading and commerce activity soon after, and thus having come within the purview of the Act under clause (b) of sub-section (3) of Section 1 of the Act, merely because there was change in its name and in the change of line of activity and starting manufacturing process, it cannot be called a new establishment set up for the first time in the year 1985. Sri R. Gururajan, learned Counsel for the petitioner, submits that while in the matter the Supreme Court was dealing within the above said two decisions, it was a factory right from the beginning covered u/s 1(3)(a) of the Act, the present position is different, inasmuch as, the petitioner earlier to 1985 was not a factory and as such not an

establishment covered u/s 1(3)(a) of the Act, and that, even the case of the respondent is that only in the year 1985 petitioner started manufacturing process and therefore, the case of the petitioner must be examined in the light of the fact that for the first time it is sought to be brought within the purview of "establishment" within the meaning of Section 1(3)(a) of the Act. It would be difficult to accept this position because the detailed order at Annexure-H would make it clear that the respondent was proposing to take into consideration the fact whether under clause (b) or under clause (a) of sub-section (3) of Section 1 of the Act the petitioner was very much an establishment right from the year 1980, and it was in this context that the trading and commerce activity that the petitioner had been carrying on right from the year 1980 was specifically referred to.

8. Sri R. Gururajan, learned Counsel for the petitioner, refers to a decision of a Division Bench of this Court in Regional Provident Fund Commissioner Vs. B. Rukmini K. Shetty, . That was a case wherein a partnership which owned certain property which had been leased out for running a hotel, filed a suit for eviction of the lessee which was decided in their favour after hot contest and, thereafter, the wife of one of the partners took the premises on lease and after obtaining loan from a bank and a fresh licence from the municipality, established a restaurant with new furniture and utensils and recruited new employees, not continuing in service even one of the employees of the previous lessee, and in those circumstances, claimed infancy protection u/s 16(1)(b) of the Act. The Division Bench held that the facts established that a new business was commenced which was not a continuation of the old, and the fact that the restaurant was run under the same name as the old one was not by itself conclusive to establish that it was a continuation of the old, in the face of the other established facts.

9. This decision would hardly be applicable to the facts of the present case. Possession of the premises had been obtained after bitter contest in an eviction proceeding. The lessee, who had been running hotel, had absolutely no concern with the hotel that was commenced after recovery of possession of the premises in an eviction proceeding. Not even a single employee working with the lessee was continued. For all purposes, it was a total new establishment. The mere fact that the old name was continued, as observed by the Division Bench, did not very much matter. In the present case, however, it is the very company that is continuing its activity right from the year 1980. Earlier, it was trading and commerce activity, still an activity that brought the company within the purview of the Act, and later its activity was changed to that of manufacturing process, once again continuing the petitioner within the purview of the Act. In the circumstances, the said decision of the Division Bench of this Court in Rukmini Shetty's case, supra, has no application to the facts of the present case.

10. Examined in the light of the two decisions of the Supreme Court referred to earlier, petitioner's infancy period is rightly held to commence from the year 1980 and not from the year 1985. Annexure-H therefore is valid.

11. Petition dismissed.