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**(1984) 11 GUJ CK 0012**  
**In the Gujarat High Court**

Gujchem Distillers India Ltd.

APPELLANT

Vs

Regional Provident Fund Commissioner

RESPONDENT

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**Date of Decision :** 26-11-1984

**Acts Referred:**

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 1, 16, 2A, 7A

Industries (Development and Regulation) Act, 1951 — Section 18

**Citation :** (1985) 2 GLR 45 : (1986) 1 LLJ 19

**Hon'ble Judges :** R.A. Mehta, J;N.H. Bhatt, J

**Bench :** Division Bench

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**Judgement**

N.H. Bhatt, J.—This is a petition by one company challenging the legality, validity and constitutionality of the enquiry conducted by the respondent, the Regional Provident Fund Commissioner, Gujarat State, u/s 7A of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952, hereinafter referred to as "the Act" for brevity's sake. The question arose because of the refusal of the respondent to accord to the petitioner-company the infancy benefit u/s 16(1)(b) of the said Act.

2. In order to understand the controversy, a few facts are required to be closely noted. The petitioner is a company incorporated under the provisions of the Indian Companies Act Initially, it bore the name "Sardesai Brothers Limited", which was ultimately changed to the present name Gujchem Distillers India Ltd. The petitioner has its original factory at Billimora in Valsad District and that factory, we were told at the Bar, had been started somewhere in the year 1939. The said company has been manufacturing Rectified Spirit at Billimora and many other products are also there manufactured by them. In the year 1975, the company decided to establish a new factory at the Industrial Estate, Ankleshwar, for the purpose of manufacturing Acetic Acid. For that purpose, this company obtained loans from various banking and financing public institutions, which loans were earmarked only for that new unit or set established there at Ankleshwar, which is about 150 Kms. away from Billimora where the old factory

continued and still continues to operate. The State Government had granted a cash subsidy of Rs. 15 lac specifically for this new factory. Even Income Tax concessions have been granted to this new unit, which has got its own staff, both labour and managerial, to look after its operations there. Both the factories, one at Billimora and other at Ankleshwar, have got separate independent licences under the Prohibition and Excise Act and the licence granted by the Central Government for the manufacture of Acetic Acid is also separately granted. It is the say of the petitioner that the activities of the two units are totally distinct so much so that Ankleshwar unit manufactures only Acetic Acid whereas Billimora unit manufactures various chemicals including industrial alcohol. It is also proved, without any controversy from the other side, after the original balance-sheets of the company and separate balance sheets of the two units, were physically shown that the account books of the two units are kept separate and distinct and profit and loss accounts are also drawn separately. No doubt, at a later stage they are consolidated in a form to be presented to the shareholders of the company and to the registrar of companies and for the purpose of Income Tax. There was no transferability of the employees between the two units, which maintained independent muster rolls and barring the initial loan-service of a few and far between employees from Billimora, whose salary came to be debited to the Ankleshwar unit, there was no transfer of any employee, even though those employees were there at Ankleshwar for the initial period, they were seen thereafter repatriated to the parent unit. Separate agreements had been entered into with different Unions in respect of the two units and even bonus questions of the two units are separately dealt with. It is the petitioner's say that thus for all practical purposes, the Ankleshwar unit is an independent unit or an establishment and the refusal to extend the benefit u/s 16(1)(b) of the Act to the petitioner-company in respect of Ankleshwar unit was an action unjustified in law.

3. The matter was heard by us considerably. In the course of the hearing, we felt that certain more information was required to be had. We had, therefore, called upon the petitioner-company to furnish us with the statement of the Rectified Spirit manufactured by the Billimora unit and its consumption, both by Billimora unit and also by the Ankleshwar unit. Sufficient time also was given to the petitioner-company to collect this information and furnish the same to us. That consolidated statement is to be found at page 60 of the compilation. It is now an established fact that the raw material requisite for the manufacture of the Acetic Acid at Ankleshwar is the Specified Denatured Spirit, which is a commodity within the purview of the Bombay Prohibition Act and also within the distributive powers of the Commissioner for Industries, Gujarat State by virtue of Section 18(g) of the Industries Development and Regulation Act, 1951, It is no longer in dispute before us that the requisite quantity of Specially Denatured Spirit required as the raw material by the Ankleshwar unit is made available to the Ankleshwar project as per the permits issued by the Commissioner for Industries and year after year, as the statement at page 60 shows, a good deal of the total quantity required by the Ankleshwar unit is directed to be purchased under the release orders issued

by the Commissioner for Industries to units other than Billimora units of this very company. The chart at page 60 shows that between the years 1976-77 to 1979-80 (that is, four years" period), out of the total quantity of Specially Denatured Spirit required to be purchased by Ankleshwar Project 4,40,000; 22,10,100; 13,44,000; and 5,00,000 litres of the commodity were allotted to this Ankleshwar project from other States. In these years respectively, the total quantity needed by the Ankleshwar unit was 11,16,800; 38,75,400; 34,00,000 and 43,06,000 litres. So some times even more than half is supplied by the units other than Billimora unit, but one striking feature of the chart at page 60 is that even though the Billimora unit, had surplus stock of that commodity with it for being directed to the Ankleshwar unit, if it were within the power and control of this petitioner-company, the controlling authority, namely, the Commissioner of Industries, managed his distributing powers and duties in the way he thought best. This was a factor emphasised in this petition also. In the representation made to the respondent by this company, in para. 6, which is Annexure B, it has been specifically mentioned as follows: -

the Billimora unit at its own willingness, cannot send alcohol directly without getting appropriate release order from the competent authority i.e. office of the Industries Commissioner, Gujarat State, Ahmedabad. On number of occasions even though the said unit was having sufficient stock of industrial alcohol, we were given release orders by the office of the Industries Commissioner, Gujarat State, Ahmedabad, to lift industries alcohol from Maharashtra and other States.

This statement sufficiently stands buttressed by the Chart produced at page 60.

4. On the above and other grounds, it was very vehemently contended before us by the petitioner that though there was a unity of ownership and final management between these two units, they were for all legal purposes separate establishments and the order of the respondent in refusing to extend the infancy benefit was an act per se unjustifiable.

5. In this connection, certain legal aspects are required to be noted. The Act, which is a welfare piece of legislation and, therefore, required to be interpreted liberally in favour of the employees, in Section 1(3) provides that the Act applies to every establishment, which is a factory engaged in any industry specified in Schedule I and in which twenty or more persons are employed. The term "establishment" has not been defined in this Act and it appears that for good reasons, it has not been so done, but the unfortunate aftermath of the want of a definition has given rise to a situation, which has proverbially stated to be the joy of the lawyers and a woe of the judiciary. However, to us it appears that there is no such difficulty in spelling out what an establishment is contemplated to be in Section 1(3)(a) of the Act. An establishment for the purpose of attracting the provisions of the Act must be a factory engaged in any industries specified in Schedule I. Ankleshwar unit is a factory engaged in the industry specified in Schedule I. There is no controversy on this question. In terms of other relevant laws, it is an independent factory and, therefore, ordinarily if the provisions of

Section (3)(a) are to be construed qua this Ankleshwar factory, it can be said that it is a factory, to which the Act applies. However, the ingenuity of the industrial world, particularly in India, as the judicial records sufficiently prove, is proverbially high and that is why the Legislature had to step in, in order to plug the loopholes, and to advance the objectives behind the Act. Section 2A, therefore, clarifies that where the establishment consists of different departments or where the establishment has various branches, all such Departments or Branches are to be treated as one establishment, irrespective of the fact that these Departments or branches are located at the same site or are different sites. In our view, the employment of the terms "departments or branches" is highly significant. There is clearly evident the legislative intent here. If one factory, wherever situated, can be said to be a department or a branch of the other, it can be said that there is inter-connection between the two. There is either mutual dependence of one over the other so that one cannot function altogether or substantially without the other or at any rate cannot thrive wholly or substantially in the absence of the other. So, if the ingenious entrepreneurs so manage their affairs as to have separate factories, which on practical analysis can be said to be departments or branches of the other on account of certain well known inter-connections, the clarification made in Section 2A would step in ultimately to realise the high objective sought to be achieved by this piece of legislation, namely, the present Act.

6. Let us in the light of this bare reading of the provisions of law examine the facts of the present case. It has been stated in few judicial precedents that were cited before us like Alloy Steel Project's case 1971 I L.L.J. 216 and other authorities cited before us, including the judgment of this court in the case of Dhoraji Engg. Works v. Regional Provident Fund Commissioner, Ahmedabad 21(2) G.L.R. 461 with special reference to the judgment of the Supreme Court in the case of Associated Cement Co. Ltd. v. Their Workmen 1960 I L.L.J. 56, which was a case under the Industrial Disputes Act, that the term "establishment" is not defined in the Act and, therefore, every case has to be decided on the conspectus of all relevant factors of that particular case. There cannot be a rigid formula, nor can there be any water-tight guidelines because what is good in respect of one case may not be good in respect of another case. It is, therefore, stated that one factor or two by itself or themselves may not be sufficient to lead to a definite conclusion one way or the other, but on the overall consideration of all relevant factors of the court finds that the unit for all purposes is a distinct unit, the only factor that it is run by the common employer, may be a company or a partnership would hardly be of any consequence. In the case on hand, what has been emphasised time and again by the authority, whose order at Annexure A dated 13th March, 1984 is impugned in this petition, is that the petitioner-company started its another unit at Billimora and was using the raw material as supplied by the Billimora unit of the company and thus Ankleshwar unit was dependent upon Billimora unit and this functional integrality between the two units together with unity of ownership and existence of a common balance sheet

showing no separate profit and loss accounts for the units shown and Income Tax assessment also having been done as a whole, were the factors that went to establish that they were part and parcel of one common establishment. We find that unity of ownership by itself is hardly of any consequence. The petitioner had asserted even before the respondent that separate balance sheets were drawn together with profit and loss accounts for the units, but the authority harped only on the consolidated balance sheet prepared in the company's balance sheet and profit and loss accounts. We are amply satisfied by the production of the original documents, which were shown to the Advocate for the respondent also, that separate accounts are maintained, separate balance sheets are drawn and separate profit and loss accounts are also there, but as the company is the common owner of the two units, for the purpose of apprising the shareholders and for the purpose of Income Tax, a consolidated balance sheet is to be drawn and submitted to the Income Tax Department. It is, therefore, evident that totally unconnected circumstances have been highlighted by the authorities.

7. Regarding the functional integrality emphasised in para. 9 of the order, we find that the facts are otherwise. Right from the year 1949 when the Bombay Prohibition Act came to be enacted, and more so since the year 1951 when the Industries Development and Regulation Act, 1951 came to find its place in the statute book, it is known to all concerned that it is no longer in the hands of the masters of this company to divert their Specially Denatured Spirit at their sweet will to the Ankleshwar project. Even in the year 1975-76, when this new unit at Ankleshwar was conceived and brought into being there could not have been any misgiving in the mind of the Directors of the Company that they could not decide on their own that their Denatured Spirit would be diverted to their Ankleshwar project at their beck and call. Again, we refer to the chart at page 60 of this compilation and find that every year, despite this Billimora unit having surplus quantity, the Ankleshwar unit was directed to lift a substantial part its quantity from places other than the Billimora unit. Time and again, the petitioner has emphasised this fact, but the authorities unfortunately have paid little heed to their contention. It is to be noted in this connection that Billimora unit manufactures not only Denatured Spirit, but many other chemicals and this it has been doing since long. The Acetic Acid is the solitary item of production at the Ankleshwar unit. With the establishments being totally distinct, it is not possible to subscribe to the view that one is mooted and conceived because of the other. There is no mutual inter-dependence except for the fortuitous circumstance that the Commissioner for Industries, Gujarat State, finding Billimora possibly nearer might be issuing release orders for the requisite raw materials to the Ankleshwar unit and lifting of that quota under the release orders from that Billimora unit. The company has no say in the matter, no control over the movement of the commodity and it is, therefore, difficult to attach any credence to the emphasis laid by the respondent that there is functional integrality. One unit can exist even without the others' co-operation.

Chhotalal Morarji Dhami Vs. Regional Provident Fund Commissioner and Others,

8. The learned Counsel for the respondent, however, invited our attention to some judgments, which we shall simply enumerate. They Are: -

(i) Varjivandas Hirji and Co. Vs. D.T. Ghatpande and Another, .

(ii) A, Gangadharan v. Govt. of India and Anr. 1978 LabIC 1625;

(iii) Chhotalal Morarji Dhami Vs. Regional Provident Fund Commissioner and Others, .

(iv) Sri Varadarajaswami Transports (Pvt.) Ltd. Vs. Regional Provident Fund Commissioner, Madras and Another, ;

The first three of the four authorities clearly show that the unit was totally dependent on the earlier unit so much so that with the collapse or closing of the earlier one, the latter unit was bound to go into liquidation. These are the cases of patent inter-dependability, which is nonexistent in the case on hand. Even if the Billimora unit, say, goes dry, the Ankleshwar unit can exist because it has to depend on the quota released by the Commissioner of Industries, who will get the requisite quota from any unit he chooses. The last of the four cases, namely, the Madras case, is a case of partnership getting substituted by a regularly constituted company. The factory remained the same. In all four cases, conceivable and reasonable arguments could be advanced by the units and, therefore, they were rightly rejected almost at the threshold.

9. We, therefore, hold that on overall consideration of the various factors, which we have enumerated in the earlier part of our judgment, the Ankleshwar unit has to be taken as a separate unit and, therefore, entitled to the infancy benefit provided for by Section 16(1)(b) of the Act. In view of this decision of ours, resting on the facts the writ to be passed we are not required to deal with the question of vires raised by the petitioner company in this petition,

10. The result is that the petition succeeds. We, therefore, issue a writ that the enquiry and the consequential orders at Annexures A and B passed by the respondent are void, illegal and are of no effect and we declare that the petitioner's Ankleshwar project is entitled to infancy benefit. Rule is accordingly made absolute with no order as to costs.