

(2003) 04 DEL CK 0012
In the Delhi High Court
Case No : C.W.P. No. 1009 of 1983

Hamdard (Wakf) Lab. (India)

APPELLANT

Vs

Sh. K.L. Sehgal, Regional Provident Fund Commisisoner and
Others

RESPONDENT

Date of Decision : 24-04-2003

Acts Referred:

Citation : (2003) 3 AD 683 : (2003) 104 DLT 897 : (2003) 68 DRJ 567 : (2003) 3 LLJ 439

Hon'ble Judges : Dr. M.K. Sharma, J

Bench : Single Bench

Advocate : S.N. Bhandari and Deepa Das, for the Appellant; R.C. Chawla and Piyush Sharma, for R4, for the Respondent

Final Decision : Dismissed

Judgement

Mukundakam Sharma, J.

1. Being aggrieved by the order dated 9.3.1983 passed by the respondent No. 1, under the provisions of Section 7-A of the Employees Provident Fund and Miscellaneous Provisions Act, 1952, the present petition was filed in this court by the petitioner praying for setting aside and quashing the aforesaid order.

2. By the aforesaid order it was held by the Regional Provident Fund Commissioner, respondent No. 1, that M/s. Hamdard (Wakf) Laboratory (India), the petitioner herein and the respondent No. 4 institute, constitute one establishment and, Therefore, the employees working in the respondent No. 4 institute would receive the provident fund benefit from the date of its set up.

3. M/s. Hamdard Dawakhana (Wakf) Laboratory is a wakf registered under the Muslim Wakf Act. The respondent No. 4 institute, on the other hand, is a society registered under the Societies Registration Act. The Regional Provident Fund Commissioner, initiated a proceeding u/s 7-A of the said Act for determination of the dues payable by the petitioner to the employees of respondent No. 4 and in

the course thereof issued summons to the petitioner. The institute, namely, the respondent No. 4 was also impleaded as a party in the said proceeding. After appearance in the matter the petitioner filed an application for quashing the order of impleading the institute as a party and also requesting for dropping the enquiry against it. The workmen of the petitioner and respondent No. 4 also entered appearance and they also submitted certain documents in the course of the aforesaid proceeding. The parties filed various records in support of their respective claims.

4. The contention of the petitioner is that the petitioner establishment and the respondent No. 4 are two separate legal entities and that they have separate existence. It was also contended that the respondent No. 4 is a charitable, educational and research organisation and is recognised by the Indian Council for Medical Research. It was submitted by the petitioner that there is no unity of ownership between the petitioner and the respondent No. 4 nor there is any financial control. It was also submitted that there is also no management control between the petitioner and the respondent No. 4 and that a separate code for provident fund was allotted to the respondent No. 4. in the year 1982 and, Therefore, admittedly, the respondent No. 4 is neither a branch nor a department of the petitioner and is not covered under the provisions of the Act, particularly when there is no inter-linking. The workmen, however, submitted that the respondent No. 4 institute is a part of the petitioner as the provident fund contribution was deducted from the wages of the concerned employees of the institute, respondent No. 4, and after such deduction, it was deposited with the petitioner. It was also pointed out that the petitioner transferred the services of some of the workers, namely, S/Sh. G. Rabbani, Tagali Hasan, , Abdul Rehman Khan, Galib Hussain and Nasiri Ali from Hamdard (Wakf) Laboratories to the respondent No. 4 institute and their provident fund contributions were deducted by the institute, the respondent No. 4 and deposited with the petitioner. It was also pointed out that the land on which the institute exists belong to the petitioner establishment and it is having a tube-well at Pul Pehlad of which the electricity bills are also being paid from the account of the respondent No. 4 institute. The said electricity bills are in the name of the petitioner establishment but the same are paid by the respondent No. 4 institute. It was also stated that there is a printing press in the institute, which is doing the printing work for the petitioner establishment and also for the respondent No. 4 institute.

5. The Regional Provident Fund Commissioner, respondent No. 1, considered the records including the documents that were placed by the parties. In the light of the said evidence led by the parties, it was held by the Regional Provident Fund Commissioner that it was clearly established and indicated from the records that there is unity of management between the petitioner and the respondent No. 4. It was also held that certain employees were transferred from the petitioner establishment to the respondent No. 4 institute and that they continued to get provident fund benefits under the petitioner's provident fund scheme. After noticing the judgment of the Supreme Court in *Management of Pratap Press*,

New Delhi Vs. Secretary, Delhi Press Workers' Union and Its Workmen, , the Regional Provident Fund Commissioner held that there is not only unity of ownership but there is also unity of management, supervision and control and that there is general linking of parties regarding financial integrity and also geographical proximity and unity of management between the petitioner and the respondent No. 4. Having held thus, the impugned order was passed by the Regional Provident Fund Commissioner on 9.3.1983 giving directions, as set out hereinbefore.

6. Counsel appearing for the parties have drawn my attention to the various documents, which are placed on record including those which are part of the record of the writ petition.

7. Mr. Bhandari, learned Senior Counsel, appearing for the petitioner submitted that there is neither any unity of ownership nor any management control between the petitioner and the respondent No. 4 institute. He strongly relied upon the notice dated 27.4.82 annexed as Annexure-R to the writ petition. According to the counsel, the said notice issued by the Regional Provident Fund Commissioner to the respondent No. 4 institute clearly proves and establishes that the respondent No. 4 institute is a separate legal entity and has separate liability, if any, under the Employees Provident Fund and Misc. Provisions Act, which is admitted by the Regional Provident Fund Commissioner himself in the aforesaid letter. He also drew my attention to the fact that the respondent No. 4 was allotted a separate code in respect of the Employees Provident Fund and Misc. Provisions Act by the Regional Provident Fund Commissioner himself w.e.f. 1.4.82, which is proved by the aforesaid letter dated 29.10.82 annexed as Annexure-W to the writ petition. It was submitted by him that there was no inter-linking between the petitioner and the respondent No. 4 and that the petitioner has no connection whatsoever with the respondent No. 4. It was also submitted that the petitioner is an exempted establishment and, Therefore, no such liability could also be fixed on the petitioner.

8. After the closure of the arguments, learned Senior Counsel appearing for the petitioner also submitted a synopsis of his arguments wherein he set up a new issue contending, inter alia, that in view of the judgment and order of the Division Bench of the High Court in Wire Netting Stores Delhi and Another Vs. The Regional Provident Fund Commissioner and Others, , the Regional Provident Fund Commissioner could not resume the proceedings, which were kept in abeyance as a result of the stay having been granted by the Supreme Court. It was submitted by filing the aforesaid synopsis of arguments that the Regional Provident Fund Commissioner could not have invoked the provisions of Section 7-A of the Act for holding an enquiry and issue notice under the said provisions to the petitioner as the said provision was held to be ultra virus to the Constitution of India and, Therefore, the entire proceedings initiated and concluded are vitiated and are, Therefore, liable to be set aside and quashed.

9. Although the aforesaid arguments were not advanced during the course of

arguments, however, since the same is included in the synopsis of arguments filed before this court, I propose to deal with the said argument as well in this petition.

10. A challenge was made to the constitutional validity of Section 7-A of the Act. In the aforesaid decision, namely, *Wire Netting Store (supra)* a Division Bench of this court held that the provision of Section 7-A was violative of Article 14 of the Constitution of India. The said judgment was delivered by the Division Bench of this court on 8.5.1981. Being aggrieved by the aforesaid judgment passed by the Division Bench of this court a Special Leave to Appeal was filed by the Regional Provident Fund Commissioner in the Supreme Court of India. While admitting the appeal the Supreme Court stayed the operation of the aforesaid judgment and order passed by the Division Bench of this High Court. A Full Bench of this court delivered a judgment in CWP No. 829/82 in which it was held in its judgment dated 29.1.2001 that Section 7-A of the Act is not violative of the Constitution of India merely because appeal is not provided from the order of the Regional Provident Fund Commissioner. By the aforesaid judgment and order the decision of the Division Bench of this court in the case of *Wire Netting Store (supra)* was overruled.

11. According to the learned counsel for the petitioner, since the aforesaid decision holding that Section 7-A is intra vires to the Constitution was rendered by the Full Bench only on 29.1.2001, the continuation of the proceedings by the Commissioner prior to the date of delivery of said decision was illegal and void and, Therefore, the impugned order which was passed by the Regional Provident Fund Commissioner prior to 29.1.2001 is void, illegal and is required to be set aside and quashed. I am, however, unable to accept the aforesaid contention. Since an order was passed by the Division Bench of this court in *Wire Netting (supra)* holding that Section 7-A of the Act is violative of Article 14 of the Constitution of India, the Regional Provident Fund Commissioner kept the proceedings initiated u/s 7-A of the Act against the petitioner and the respondent No. 4 in abeyance. However, after an order was passed by the Supreme Court in the Special Leave to Appeal staying the operation of the aforesaid judgment and order passed by a Division Bench of this court, the Regional Provident Fund Commissioner decided to proceed with the matter and accordingly the proceeding was continued. The parties, including the petitioner and the respondent No. 4, participated in the said proceedings without any demur or protest. They led their evidence without any objection and finally the impugned order came to be passed. Even in the writ petition, which is filed in this court, no such objection, as is sought to be raised now, was raised. Be that as it may, the Division Bench of this court held the provisions of Section 7-A as violative of Article 14 of the Constitution of India in the case of *Wire Netting Store (supra)*. Proceeding in the present case was only kept in abeyance by the Regional Provident Fund Commissioner and subsequently the same was proceeded with in accordance with law. In my considered opinion, there was no bar on the Regional Provident Fund Commissioner to proceed with the aforesaid proceeding and also

to render its decision even though in the present petition an objection has been raised that the provision of Section 7-A of the Act is violative of the provision of Article 14 of the Constitution of India. The aforesaid issue is no longer res integra in view of the aforesaid Full Bench decision of this Court rendered in CW 829/1982 - M/s. Jay Prestressed Products Limited and Another vs. Union of India and Others decided on 21.9.2001 and also in view of the Constitution Bench decision of the Supreme Court in Gammon India Ltd. and Others Vs. Union of India (UOI) and Others, . The provision of Section 7-A was held to be ultra virus in a different proceeding, which was subsequently stayed by the Supreme Court. The aforesaid decision did not decide the present proceeding finally which was still pending for consideration before the Commissioner. Therefore, there was no impediment in continuing the aforesaid proceeding and also in deciding the same. The decision in Shree Chamundi Mopeds Ltd. Vs. Church of South India Trust Association CSI Cinod Secretariat, Madras, , relied upon by the petitioner is clearly distinguishable on facts. The said decision was rendered in the facts where the order was passed in the same proceeding. In that view of the matter, both the aforesaid issues which are sought to be raised by the petitioner in the present petition are without any merit and are rejected.

12. Having held thus, I may now proceed to deal with the contention raised with regard to merit of the proceedings. Learned Senior Counsel appearing for the petitioner, during the course of his submissions vehemently submitted that there is no unity of ownership nor any management control between the petitioner and the respondent No. 4 institute and, Therefore, there is no inter-linking between the petitioner establishment and the respondent No. 4 institute and consequently the impugned order is required to be set aside and quashed. It is true that the petitioner is a Muslim Wakf and is registered under the Muslim Wakf Act. The respondent No. 4 institute, on the other hand, is a society registered under the Societies Registration Act. However, it is difficult to accept the contention of the learned Senior Counsel appearing for the petitioner that only because they are registered under two separate Acts and are two separate distinct entities, there is no inter-linking between the petitioner establishment and the respondent No. 4 institute because from the evidence it is proved and established that there is inter-connection between the petitioner establishment and the respondent No. 4 institute. The Regional Provident Fund Commissioner during the course of his findings recorded that the petitioner was founded in 1906 and was turned into a Wakf. The income generated by the Hamdard Wakf was made over to the Hamdard National Foundation, which in turn has diverted its funds towards establishment of research clinics a nursing home and the institute of History Medicine and Medical Research, which is the respondent No. 4. At page 224 of the original record, a document is placed on record, which gives the particulars of the budget expenditure of Hamdard National Foundation for the year 1965-1966. The said document indicates that a grant has been given by Hamdard National Foundation to the respondent No. 4 of an amount of Rs.4,00,000/- . Interlinking between the petitioner and the respondent No. 4 is

also proved by the said document, which contains a table showing the connection between the two. The aforesaid fact, Therefore, proves and establishes that the respondent No. 4 was founded by Hamdard National Foundation, which was established by Hamdard Wakf to spend major part of its income on national charities. The aforesaid conclusions recorded by the Regional Provident Fund Commissioner could not be contested by the petitioner.

13. There is a printing press of the respondent No. 4 institute, which was also doing the work of the petitioner establishment and the land on which the respondent No. 4 institute is housed even now belongs to the petitioner establishment. Earlier also the office of the respondent No. 4 institute was located at Asaf Ali Road and in the premises, which belongs to the petitioner establishment. The respondent No. 4 institute has admitted that the electricity bills for the petitioner establishment are paid by them. The evidence led by the workmen also has proved that certain employees of the petitioner establishment were transferred from the petitioner establishment to respondent No. 4 institute and that the provident fund benefits of the said employees are being deducted and are being deposited with the petitioner establishment. The aforesaid factual position leads to the conclusion that there is unity of ownership and inter-linking between the petitioner and the respondent No. 4 institute. There is unity of management, supervision and control of the petitioner in respect of respondent No. 4, which is proved by the fact that some of the employees of the petitioner establishment were transferred to respondent No. 4 institute and were working with the respondent No. 4 institute when even their provident fund contribution was deducted by the respondent No. 4 institute and were deposited with the provident fund account of the petitioner. The President/Chairman of the respondent No. 4 society is the Matwali of the petitioner wakf. Therefore, there is also unity of management between the petitioner herein and the respondent No. 4 institute and there is also geographical proximity and financial integrality of both the establishments.

14. In view of the aforesaid decision, in my considered opinion, the decision of the Supreme Court in the case of Pratap Press (supra) and the decision rendered by the Supreme Court in M/S. RAJASTHAN PREM KRISHAN GOODS TRANSPORT CO. VS. REGIONAL PROVIDENT FUND COMMISSIONER reported in 1997 LAB.I.C.146 , Regional Provident Fund Commissioner, Jaipur Vs. Naraini Udyog and Others, and in NOOR NIWAS NURSERY PUBLIC SCHOOL VS. THE REGIONAL PROVIDENT FUND COMMISSIONER AND OTHERS reported in 2001 LAB.I.C. 323 are applicable to the facts and circumstances of this case. In Andhra University Vs. Regional Provident Fund Commissioner of Andhra Pradesh and Others, , it was held by the Supreme Court that the aforesaid Act is a beneficent piece of social welfare legislation aimed at promoting and securing the well being of the employees and the Court will not adopt a narrow interpretation which will have the effect of defeating the very object and purpose of the Act. In the said decision it was held that where the Department of Publications and Press of the University was running a printing press where the work of printing of text books,

journals and magazines for the various constituent and affiliated colleges as well of various items of stationery such as admission forms to colleges, hostels and examination forms etc. was carried out and about 100 persons were employed in connection with the said activity in the said Department , the establishment, namely, the Department of Publications and Press could be said to be a factory as such activities clearly constitute manufacture within the meaning of the said expression and it was held that since more than 20 persons were employed in concerned establishment, the establishment would be liable for coverage under the Act.

15. In Noor Niwas Nursery Public School (supra) the Supreme Court has held that when two units are run by the same society and they are located at one and the same address thereby establishing geographical proximity, the same would clearly point out to one factor that the two units constitute one single establishment. The ratio of the aforesaid decision is squarely applicable to the facts of the present case.

16. In the case of Management of Pratap Press (supra), the Supreme Court laid down certain tests for the determination as to whether the two units are distinct or integrated. It is, however, to be noted that each case would depend upon its own peculiar facts and has to be decided accordingly as was held by the Supreme Court in Noor Niwas Nursery Public School (supra). The Regional Provident Fund Commissioner on appreciation of the facts on record held that there is functional unity and integrality between the two concerns, namely, the petitioner and the respondent No. 4. The aforesaid finding is essentially a finding of fact.

17. Reliance was placed on the letter dated 27.4.1982 of the Provident Fund Commissioner to the respondent No. 4 for the submission that the respondent No. 4 was admittedly a separate establishment and was sought to be independently brought under the purview of the Act effective from 6.3.1982 in view of the notification dated 19.2.1982. Counsel appearing for the respondent submitted that the said letter was issued by way of abundant caution in view of the stand taken by the petitioner that there is no interlinking between the petitioner and the respondent No. 4. I have considered the said submission also. Merely because the aforesaid letter was issued by the Commissioner would not, in any manner, affect the position that the petitioner and the respondent No. 4 constitute one establishment. The said letter cannot in any manner be said to be an admission on the part of the Commissioner that both are two different establishments. If on appreciation of the evidence on record, it is found that two units constitute one establishment, they would be treated as such. However, when the said letter was issued, the issue was open and did not attain finality. At that stage, it was open for the Commissioner to issue the said letter by way of abundant caution, for even if it was held that the two units do not constitute one establishment but still there would have been liability of the respondent No. 4 under the Act in view of the notification dated 19.2.1982. In view of the

foregoing discussion, the aforesaid plea is found to be without any merit.

18. All these facts, which are mentioned hereinabove, definitely and essentially prove and establish that there is inter-linking and inter-dependence of the two units and, Therefore, the findings recorded by the Regional Provident Fund Commissioner are found to be legal and justified. In that view of the matter, I find no merit in this petition and the petition is dismissed.