
(1980) 01 MP CK 0004

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 285 of 1979

Hardware and Sanitary Traders

APPELLANT

Vs

Regional Provident Fund Commissioner, Indore

RESPONDENT

Date of Decision : 25-01-1980

Acts Referred:

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

Citation : (1980) JLJ 329

Hon'ble Judges : G.P. Singh, C.J.; Faizanuddin, J

Bench : Division Bench

Advocate : Gulab Gupta, for the Appellant; R.P. Sinha, for the Respondent

Final Decision : Allowed

Judgement

G.P. Singh, J.—This order shall also dispose of Misc. Petition No. 482 of 1979.

2. By these petitions under Article 226 of the Constitution the petitioner challenge an order dated 7th February 1979 passed by the Regional Provident Fund Commissioner, Madhya Pradesh, Indore, u/s 7A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, holding the Act applicable to be petitioners establishments.

3. The facts found are that M/s Mediwala and Company, Jabalpur, was a partnership firm consisting of three partners namely, Jakshi Lalji Mediwala, Nagji Lalji Mediwala and Ratansingh Hansraj. The firm was carrying on business in machinery and hardware goods. It had three shops in Jabalpur at different places. On 25th April 1963 the firm was dissolved and a deed of dissolution was executed by the three partners. One shop was given to each partner who was free to run the business at his own choice. The three shops started working again from 29th April 1963 under the ownership of three different partnerships as below:

(1) Mediwala Machinery Co.

(a)

ShriJagshiLaljiMediwala

(b)

Smt. Laxmi Devi Mediwala

(c)

ShriNitinNagjiMediwala

(d)

ShriMohanlalSoni

(2) Mediwala & Co.

(a)

ShriNagjiLaljiMediwala

(b)

Smt. Urmia Ben Mediwala

(c)

ShriVimalJagshiMediwala

(3) Hardware and Sanitary

(a)

ShriRatansinghHansraj

Traders

(b)

ShriNavin J. Mediwala

(c)

ShriJayantj J. Mediwaia

(d)

Shri S. N. Dave.

We are not concerned in these petitions with the shop run by Mediwala Machinery Co. and we are concerned here only with the shops which are run separately by Mediwala and Co. and Hardware and Sanitary Traders. The former is the petitioner in M.P. No. 482 of 1979 and the latter in M.P. No. 285 of 1979. The view of the Regional Provident Fund Commissioner is that the establishments held by the petitioners are continuation of the same establishment which was owned by the original firm M/s Mediwala and Co. and that as that establishment

had employed more than twenty persons during the period from 10th April 1962 to 4th May 1962, the establishments of the petitioners continued to be governed by the Act.

4. Learned counsel for the petitioners submits that the finding that more than twenty persons were employed between 10th April 1962 to 4th May 1962 in the original establishment is not correct. He also submits that even if that finding be accepted, the establishments of the petitioners can not be held to be the same establishment which was owned by M/s Mediwala and Co. and that the establishments of the petitioners are new establishments to which the Act has no application because these establishments never employed twenty or more persons. We do not find it necessary to consider the first submission made by the learned counsel, for in our opinion, the second submission must be accepted.

5. Section 1(3) makes the Act applicable to any establishment employing twenty or more persons. Section 1(5) says that an establishment to which the Act applies shall continue to be governed by the Act notwithstanding that the number of persons employed therein at any time falls below, twenty. Another provision which is relevant for our consideration is section 16(1)(b). This section provides that the Act shall not apply to any establishment employing fifty or more persons or twenty or more, but less than fifty persons until the expiry of three years in the case of the former and five years in the case of the latter, from the date on which the establishment is, or has been, set up. There is an explanation to section 16(1) which provides that for the removal of doubts, it is hereby declared that an establishment shall not be deemed to be newly set up merely by reason of a change in its location.

6. The three shops which were run and owned by the firm M/s Mediwala and Co. before their partition constituted one establishment. Even on the findings recorded by the Regional Provident Fund Commissioner each one of them separately never employed twenty or more persons. The finding in this respect is that during the period from 10th April to 4th May 1962 collectively more than twenty persons were employed in the shops. After the partnership was dissolved and one shop each was given to each partner, there was a complete disruption of the original establishment. Each partner started carrying on business separately in the shop allotted to him by forming a new partnership with different persons. It has not been alleged nor there is any finding that the dissolution of the original firm was not real and was a device to get out of the provisions of the Act. The dissolution of the firm and the division of the establishment being real it has to be held that the unity and integrity of the establishment was broken and three new establishments came into existence which are owned by different persons and are separately run by them by constituting three new partnerships. In these circumstances, the two shops owned by the petitioners in these petitions constitute two different establishments and they cannot be taken to be continuation of the old establishment held by the original firm M/s Mediwala and Co. As twenty persons were never employed in these establishments the Act has

no application to them.

7. In *State of Punjab Vs. Satpal and Another*, it was observed by the Supreme Court that the law takes into account only the existence of establishments and the employment of a certain number of persons in them over a given period and that change of location or change of composition of partners craven change in the manufacturing process is not vital in the application of the law. In *C.I.W.T. Corpn, v. Their Workmen* AIR 1975 SC 1639 it was held that "establishment" means the whole trading business or manufacturing apparatus with a separate identifiable existence and that mere change in ownership docs not give rise to new establishment. The position, however, in the instant case is entirely different. Here, as stated above by us, there is a complete disruption of the old establishment by the dissolution of the original firm and allotment of one shop each to the three partners who constituted the firm. A case directly in point is *Mohd, Kutti (K.M) v. R.P.F. Commr*, (1968) 2 LL 466. In that case a Tea Estate was partitioned on death of the owner amongst his sons and daughters. The portion of the estate got by the petitioner in that case employed less than twenty persons and the petitioner contended that his portion was a separate establishment and not continuation of the old establishment. The Kerala High Court accepted this contention and held that this was not a change in the ownership of an establishment which continues to exist as before; but the cessation of an establishment by disruption into three separate establishments by the partition. It was observed that the partition being real and bona fide, the integrity of the original establishment was disrupted and three separate establishments were created and as the separated establishment of the petitioner employed less than twenty persons, the Act was not applicable to it. The Kerala High Court re-affirmed this view in the Full Bench case of *T.A. Zainullabdeen v. R.P.F. Commr*, Kerala 1975 Lab. IC 412. It was held in this case that a real and bona fide division disrupts the original establishment and gives birth to a new and separate and distinct establishments. We respectfully agree with the view taken by the Kerala High Court in these cases.

8. The petitions are allowed. The impugned order of the Regional Provident Fund Commissioner, Indore, is quashed. There shall, however, be no order as to costs of these petitions. The security amount be refunded to the petitioners in both the petitions.