
(1970) 04 RAJ CK 0013
In the Rajasthan High Court
Case No : Civil Writ Petition No. 467 of 1967

Hariram Nathani

APPELLANT

Vs

Regional Provident Fund Commissioner, Employees Provident
Fund and Another

RESPONDENT

Date of Decision : 14-04-1970

Acts Referred:

Constitution of India, 1950 — Article 326

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

Citation : (1970) WLN 275

Hon'ble Judges : V.P. Tyagi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

V.P. Tyagi, J.—This writ application filed by Hariram Nathani under Article 326 of the Constitution arises out of the following circumstances.

2. Petitioner's father Rai Bahadur Rameshwar Nathani has a partner in the firm known as Messers. Duduwala & Company which used to carry on the mining operations of mica in nine different areas leased out to it in the district of Bhilwara. Petitioner's father died on 18th January, 1957 and with his death the partnership came to an end. The surviving partner Ram Kumar Agarwal then filed a suit in the Calcutta High Court for the dissolution of partnership. That suit ended in a compromise and according to the compromise decree joint receivers and managers of the business of the firm Messers Duduwala & Company were appointed. In Clause (7) of the said decree it was provided that the joint receivers shall divide the present mining fields into five equal blocks and Ram Kumar Agarwal will have the first option to choose one of the blocks for himself and the remaining four blocks will be taken over by the four sons, including the petitioner, of late Rameshwar Nathani. The mandate of the decree was consequently carried out by the joint receivers and out of five blocks one block was handed over to the petitioner and the mining lease in that block was granted

by the State in favour of the petitioner. The petitioner then started the mining operation in the said block and it is said that some of the employees of the dissolved firm of Messers. Duduwala & Company were engaged by the petitioner. According to the petitioner, he set up a new establishment for carrying out the mining operations of mica in the block received by him from the joint receivers after the lease was sanctioned by the State Government in his favour, that is, on 23rd of October, 1965.

3. The case of the petitioner is that the present establishment of the petitioner has nothing to do with the earlier establishment of Messers. Duduwala & Company but still the respondent No. 1 Regional Provident Fund Commissioner, Rajasthan, served the petitioner with a show cause notice why the contribution payable by the employer towards the provident fund be not determined u/s 7A of the Employees Provident Fund Act 1952 (hereinafter referred to as the Act). The petitioner claimed infancy benefits u/s 16 of Act but the respondent No. 1 held that petitioner's establishment was not an infant establishment and, therefore, it was not entitled to get any benefit u/s 16(i) of the Act and directed the petitioner vide order dated 24-2-1967 (Ex. d) to deposit the amount of Rs. 5173 10 Paisas as employer's contribution towards the provident fund under the Act. This order of the Regional Provident Fund Commissioner has been challenged by the petitioner, *inter alia*, on the grounds that the petitioner's establishment under the circumstance of this case cannot be said to be an old establishment because there is nothing in common with the non establishment and the firm Messers. Duduwala & Company and that the petitioner was entitled to the protection embodied in Section 16(i) of the Act treating the petitioner's establishment as an infant one.

4. In its reply filed by the respondent No. 1 the facts as mentioned by the petitioner as to how he started working the block received as an heir of the deceased partner of Messers. Duduwala & Company have not been controverted. The case of the respondent is that a mere change of ownership, whether by transfer or by death of the previous owner or by some other transaction does not affect the position of the establishment. According to the respondent No. 1, the dissolution of the partnership of Messers. Duduwala & Company and the renewal of a fresh lease of the lands operated by the names of the individual heirs of the deceased partner could not bring the case of the petitioner under the purview of Section 16 of the Act and, therefore, he cannot claim his establishment to be treated as a new establishment.

5. The short question that has got to be decided in this case is whether under the circumstances of this case the petitioner's establishment can be treated as a new establishment to attract the provision of Section 16(1) of the Act, or whether it shall be deemed to be an old establishment of the dissolved firm of Messers Duduwala & Company and, therefore, no infancy benefits can be claimed by the petitioner,

6. In support of his contention Mr. Lodha, appearing on behalf of the petitioner,

placed reliance on the three reported cases *Pamadi Subbarama Chetty v. Mirza zowar Ali* AIR 1960 Mys. 14 , *Vittaldas Jagannathadas and Another Vs. The Regional Provident Fund Commissioner, Madras and Another*, and also on *Devi Press Vs. Regional Provident Fund Commissioner, Madras and Another*, even though the facts of the case are different than those obtaining in the present case. Learned Deputy Government Advocate, on the other hand, placed reliance on *Vegetables Products Ltd. v. Regional Provident Fund Commissioner, W. Bengal and Ors.* (4) and the *New Ahmedabad Bansider Mills Private Ltd. v. The Union of India and Ors.* (5).

7. In the case of *Vittaldas Jagannathadas and Another Vs. The Regional Provident Fund Commissioner, Madras and Another*, the learned Judge considered the scope of the term "establishment" and tried to find out as to under what circumstances the provisions of Section 16 of the Act can be applied to give the benefit of infancy to the new establishments. The principle that the learned Judge formulated for the application of Section 16 of the Act in the words of the learned Judge is:

...the true way of looking at the liability becomes faintly clear. Where, therefore, on the entire complex of facts of a given case, it can be concluded that the legal entity, the establishment had come totally to an end, and was succeeded by a fresh legal entity, then that fresh entity is the entity to which the Act applies as a first impact and, if that entity is entitled to infancy protection, that protection will have to be granted as a matter of course, even if it happens by coincidence to have employed a large part of the personnel of the previous , establishment.

8. The learned Judge, while applying the aforesaid principle also observed.

Where however on the facts of the individual case, it appears that the new establishment is not genuinely such, but is only an old one formally resuscitated in order to avoid the legal obligation, it is always open to the, Court to hold that it is the old establishment which is substantially continuing & that the liability to contribute must be affixed to the apparently new firm also.

9. While coming to the said conclusion the learned Judge also took into consideration the judgment of the same Court, in *Devi Press Vs. Regional Provident Fund Commissioner, Madras and Another*, . In that case a company known as *Devi Press Ltd.* went into voluntary liquidation and the two managing agents of that company purchased the machinery, its accessories and its furniture and then formed a partnership to carry on the business of printing with the aid of the said factory. Even the reasons as to why, the business of the company was wound up were not apparent from the records nor did the members of the company make it clear while passing a resolution for its dissolution. From these facts it was clear that the running concern of the company, which was taken into voluntary liquidation, was taken over by the two Managing Directors and the business thereof was carried on by them by constituting a partnership firm. It was in the above circumstances that the

learned Judge, for the purpose of applying the provisions of the Act, did not consider the establishment in the hands of the two Managing Directors. who had formed a partnership firm, as a new establishment and the Court, therefore, refused to extend the infancy protection to such an establishment u/s 16(1) of the Act.

10. The other Case relied upon by the petitioner as well as by the learned Deputy Government Advocate also laid down that this question whether and establishment in the hands of the new owner is a new establishment or not is a question which can be determined on the circumstances of each individual case. I am in agreement with the principle, laid down by Anantanarayan J. in *Vittaldas Jagannathadas and Another Vs. The Regional Provident Fund Commissioner, Madras and Another*, and it is in the light of this principle that I have to examine whether in the circumstances of the instant case an establishment to carry on the mining operation a block which has come to the petitioner from the assets of Messrs. Duduwala Company shall be taken as a new establishment or as the old establishment run by Messrs. Duduwala & Company.

11. It is true that some of the employees of the firm Messrs. Duduwala & Company have been employed by the petitioner in the operation of the block that has now been leased out by the Government to the petitioner, but that fact by itself cannot go to establish that the petitioner's establishment is not a new establishment. On the death of the petitioner's father in the year 1957 the partnership firm Messrs. Duduwala & Company automatically got dissolved as it was a partnership at will. There litigation started between the heirs of the deceased partner and the surviving partner and as a result of that litigation the old firm was declared to be dissolved. The assets of the old firm were handed over to the joint receiver who distributed them as per the terms of the decree among the heirs of the deceased partner and the surviving partner. All the heirs of the deceased partner took up the assets in their individual capacity and started the working of the blocks which were ultimately leased out to them by the Government in their own right which had nothing to do with the running concern of Duduwala & Company. An old legal entity which used to work out the blocks which have now been inherited by the petitioner and other heirs of the deceased partner ceased to exist after the death of the old petitioner father and it is after the decree passed by a competent court that the petitioner has started working one of the mines inherited by him under the terms of the decree in a style which has nothing to do with the old firm of M/s. Duduwala & Company. This means that a new legal entity has now come into existence to work out 1/5th of the land which was leased out to Messrs. Duduwala & Company. The organisation of the petitioner's establishment has nothing to do with the organisation of the dissolved firm of Messrs. Duduwala & Company. These circumstances clearly go to show that it is not a case of mere change of ownership but they fully establish that the entire working of the mines has been changed and therefore the establishment in the hands of the petitioner cannot be said to be an old establishment. It is, therefore, entitled to the protection of infancy as envisaged

in Section 16(1) of the Act. In this view of the matter, the order impugned passed by the respondent No. 1 cannot be sustained.

12. The result is that the writ petition is allowed and the order passed by the Regional Provident Fund Commissioner dated 24-2-1967 is set aside. No order as to costs.