

(2001) 07 KAR CK 0081
In the Karnataka High Court
Case No : W.A. No. 1797 of 1998 L (P.F.)

Hotel Mahaveer and Others

APPELLANT

Vs

Regional Provident Fund Commissioner

RESPONDENT

Date of Decision : 27-07-2001

Acts Referred:

Citation : (2002) 92 FLR 1131 : (2002) 1 KCCR 15 : (2002) 1 LLJ 244

Hon'ble Judges : G.C. Bharuka, J;A.V. Srinivasa Reddy, J

Bench : Division Bench

Advocate : S.N. Murthy, for G. Laxman Rao, for the Appellant; Arvind Kumar, for the Respondent

Final Decision : Dismissed

Judgement

A.V. Srinivasa Reddy, J.—This appeal at the instance of the appellants-employers impugns the order passed by the learned single Judge in W.P. No. 35106 of 1994 holding that the two businesses carried on by them constitute one establishment.

2. The facts relevant for the disposal of this appeal are set out below:

The appellants run two businesses viz. Hotel New Abhiruchi Restaurant and Mahaveer Lodge from the same premises in Hassan. The respondent, Provident Fund Commissioner, taking into consideration the combined employee strength of these two businesses called upon the appellants to comply with the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as "the Act"). The appellants disputed the applicability of the Act on the ground that the two businesses are two distinct and separate establishments and the employee strength of each unit, separately, never exceeded 19 and, therefore, the Act is not applicable to either of the establishments. The matter was then enquired into by the respondent u/s 7A of the Act. The Commissioner held that the Act is applicable to the two businesses as they are, for the purposes of the Act, one and the same establishment. Having thus held on the question of applicability of the Act, the respondent called upon

the appellants to comply with the Act and also quantified the total dues payable by them. Aggrieved, the appellants moved the learned single Judge who dismissed the petition filed by them. Hence, the present appeal by the appellants.

3. We have heard the learned counsel on both sides.

4. Learned counsel for the appellant relied on a number of factors such as the businesses being carried on by two different partnership firms, they being assessed separately for tax, the maintenance of two different accounts which are being audited separately too and the fact that the businesses are operated under two different licences, to drive home the point that there was no functional integrality and, therefore, the establishments cannot be treated as one entity for the purposes of the Act. On the other hand, the learned Standing Counsel for the respondent submitted that there is functional or financial dependence between the two businesses and, therefore, they have to be treated as "one establishment" for the purposes of the Act.

5. Both the counsel relied on a number of decisions in support of their respective contentions. Before we proceed to determine the issue, we may notice the principle emerging from the earlier pronouncements.

6. In *Pai Sales Corporation v. Regional Provident Fund Commissioner* 1996 (88) FJR 323, the learned single Judge of this Court took the view that it is the cumulative effect of all the circumstances that has to be considered in order to decide whether there was functional unity or integrality between the two establishments. The view as aforesaid finds expression in the following passage:

"In order to hold that two units are one and the same, they should have basically functional integrality. Even unity of ownership, supervision common balance-sheet, the fact that employees are treated alike for the purpose of gratuity, provident fund, bonus and for conditions of service in general are not considered sufficient to hold that the units have functional integrality. If each unit has a distinct and separate entity such as Sales-tax registration, Income Tax registration, separate registration under the labour law, then, this is an important circumstance to show that they are separate and independent units. If one of the units can carry on its activities without reference to the other, it is a prima facie material to hold that the units are separate."

7. In *Regional Provident Fund Commissioner and Another Vs. Dharamsi Morarji Chemical Co. Ltd.*, , the Apex Court held that common ownership by itself is not enough, unless evidence shows interconnection between units so as to allow inference of common supervisory financial and managerial control.

8. In *The Associated Cement Companies Limited, Chaibassa Cement Works, Jhinkpani Vs. Their Workmen*, , the Apex Court with reference to what should clinch the issue -while determining the functional integrality of two establishments, had this to say:

"How the relation between the units will be judged must depend on the facts

probed, having regard to the scheme and object of the statute which gives the right of unemployment compensation and also prescribes a disqualification therefore. Thus, in one case the unity of ownership, management and control may be the important test; in another case functional integrity or general unity may be the important test; and in still another case, the important test may be the unity of employment. Indeed, in a large number of cases several tests may fall for consideration at the same time. The difficulty of applying these tests arises because of the complexities of modern industrial organization: many enterprises may have functional integrity between factories which are separately owned; some may be integrated in part with units or factories which are separately owned: some may be integrated in part with units or factories having the same ownership and in part with factories or plants which are independently owned. In the midst of all these complexities it may be difficult to discover the real thread of unity."

9. The pronouncements of the Apex Court and this Court on the tests to be adopted to determine the functional integrity or otherwise leave no doubt in our mind of the futility of laying down any one test as an absolute proof of the fact that a business is one establishment. It must be remembered that every decision is a precedent on its own facts. Each case presents its own features. Therefore, it necessarily involves finding out the true relationship between the parts or branches by examining the factual aspects, to see if they constitute one integrated whole. Where their relationship is such that in several aspects the essence of integrality is absent, it could be determined that the two businesses are two distinct and different establishments. One aspect which is undisputed in the present case is that the unit is strictly unitary, in that, there are no several parts or branches and both the businesses are located in the same premises. There is also unity of management and control, again undisputed by the appellants, as both these businesses are managed and controlled by the very same person who is a partner in both the businesses. The Act not having prescribed any specific test for determining what is "one establishment" we have to necessarily fall back upon the considerations that in the ordinary business sense would determine the unity of an establishment, keeping in view these undisputed facts.

10. It is obvious from the records that the businesses have one address and function from the same building, they have a common entrance, a common management and even a common phone. The appellants sought to overcome these indicators by urging that the two businesses are owned by two separate partnership firms and that the books of accounts are separately maintained and the two businesses are separately registered under the K.S.T. Act, Trading, Callings and Employment Act and the Karnataka Tax on Professions. Relying on these factors, which according to the appellants illustrates their functional independence, it is submitted that the learned single Judge has erred in holding otherwise.

11. In the very nature of things the business of boarding and lodging go hand in hand. The order passed by the Commissioner, produced as Annexure - A, brings out the fact that the restaurant business was being carried on by the appellants even before 1985-86 when the second of the partnership firms came into being. The appellants have also claimed depreciation on the assets such as kitchen equipments, refrigerator, furniture and fittings in the balance sheet of Hotel Mahaveer till the year 1987-88 and it is only in the year 1988, these very assets are shown as the assets of Hotel New Abhiruchi. This goes to show that though Hotel New Abhiruchi took birth in the year 1988, the boarding business was being carried on earlier by Hotel Mahaveer and that there was financial independency between the two businesses. The filing of separate balance-sheets from the year 1988-89 cannot be pressed into service as proof of functional independence more so when there was common supervisory and managerial control. They only reveal that the establishment resorted to book adjustments, may be, to overcome some fiscal burden in the form of taxes and duties which the establishment would have had to bear, if it had continued to treat itself as one establishment. The nature of businesses being carried out by the appellants are so entwined that the mutual dependability between the two can never be obliterated by making some book adjustments. This mutual dependability is so inherent that the mere maintenance of separate accounts would not be a compelling factor, in the face of all the other circumstances being taken into consideration, to hold that these two businesses are two separate establishments. On the other hand, in our considered view, these two businesses are two separate establishments. On the other hand, in our considered view, these indices unerringly point to the functional integrality of the two businesses.

12. Mr. S.N. Murthy, learned counsel for the appellants, relied on the decision in *Management of Pratap Press, New Delhi Vs. Secretary, Delhi Press Workers' Union and Its Workmen*, in support of his contention that where one unit can exist conveniently and reasonably without the other, there cannot be said to be any interdependence between the two that they should be considered as forming one unit. The Apex Court while dealing with the important test to be adopted for determining the functional integrality, observed:

"The most important test is that of functional integrality meaning thereby such of finance, employment and labour. The Court has to consider how far there is "functional integrality" meaning thereby such functional interdependence that one unit cannot exist conveniently and reasonably without the other and on the further question whether in matters of finance and employment the employer has actually kept the two units distinct or integrated."

As we have observed earlier in the course of this order, each case presents its own features and what the Court has to do is lift the veil and probe deeper to find out whether or not the two units form one establishment or they are two different and distinct establishments. In *Calcutta Chromotype Ltd. Vs. Collector of Central Excise, Calcutta*, , the Apex Court had occasion to deal with the artifice

or subterfuge resorted to by the companies to avoid tax. Deprecating the practice and deviating from the Westminister principle based upon the observations of LORD TOMLIN in the case of IRC v. Duke of Westminster (1936) AC 1, that every assessee is entitled to arrange his affairs as to not attract taxes, the Apex Court held:

"If we examine the thrust of all the decisions, there is no bar on the authorities to lift the veil of a company, whether a manufacturer or a buyer, to see it was not wearing the mask of not being treated as related person when, in fact, both, the manufacturer and the buyer are in fact the same persons."

We have done just that and from our deeper probe into the functional aspects of these two units, we are satisfied that the order passed by the first respondent treating the two units as one establishment is well founded.

13. In the result, for the reasons stated above, there is no merit in the appeal and it is, accordingly, dismissed.