
(1988) 09 BOM CK 0014
In the Bombay High Court
Case No : Writ Petition No. 946 of 1980

Industrial Factors Limited

APPELLANT

Vs

V. Prasad, Regional Provident Fund Commissioner and Others

RESPONDENT

Date of Decision : 06-09-1988

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 1(3), 1(4), 1(5), 16

Citation : (1988) 3 BomCR 651 : (1989) 58 FLR 458

Hon'ble Judges : S.C. Pratap, J;G.H. Guttal, J

Bench : Division Bench

Advocate : M.N. Bhatkal and V.G. Rege, instructed by Medekar Rego and Co, for the Appellant; R.V. Desai, P.N. Menon and T.R. Rao, for the Respondent

Final Decision : Dismissed

Judgement

S.C. Pratap, J.—Short question for determination in this petition is whether the petitioner-company is entitled to the benefit of the infancy period u/s 16 of the Provident Funds and Miscellaneous Provisions Act, 1952 (for short "the Act") already availed of by the original Company M/s. Saraiya Industrial and Containers Company Private Limited.

2. M/s. Saraiya Industrial and Containers Company Private Limited (hereinafter "the original company") manufactures of composite containers started manufacturing activity in October, 1963 at the Wagle Industrial Estate, Thane, but closed down the same in July 1972. In November, 1972 pursuant to lease agreement, the petitioner Industrial Factors Limited (for short "the petitioner company") took on lease from the original Company its imported plant machinery and equipments. It also took over from the original Company its twenty-four employees as also its raw materials and stocks. Later, the petitioner company was converted into a subsidiary of Mr. Poysha Industrial Company Limited (for short "Poysha") and it started manufacturing operations on the mezzanine floor of Poysha's premises (at Sewree, Bombay) taken on leave and

licence.

3. Upon enquiry u/s 7-A of the Act, the Regional Provident Fund Commissioner held that there was unity of management and ownership of the two units- Industrial Factors Limited and Poysha Industrial Company Limited, that the original Company Mr. Saraiya Industrial and Containers Company Private Limited was already covered under the Act and its business along with machinery having been taken over by the petitioner company, this latter will also, therefore, remain covered under the Act and that change in management would not affect the date of its coverage. The establishment in question was consequently held to be rightly covered with effect from 31st December, 1972. Dues for the period 1st January, 1973 to 31st December, 1975 were then assessed provisionally at Rs. 70,326/- under the Provident Fund Account No. I and Rs. 1620/- under the Provident Fund Account No. II. The petitioner's representation u/s 19-A of the Act was dismissed by the Central Government. Hence this petition.

4. Mr. Bhatkal, learned Counsel for the petitioner, contended that the petitioner Company was entitled to the benefit of the infancy period u/s 16 of the Act and that the decision to the contrary of the authorities below was not correct. We are unable to agree. The benefit of the infancy period u/s 16 of the Act once availed by the original Company cannot be extended afresh and again to the petitioner Company. To do so militates against the prime purpose of the Act. Accepting the petitioner's claim would lead to strange and unintended results defeating the object of the Act and the interests of the workers. A prosperous establishment of "A" (which has already availed of the benefit of the infancy period) is taken over by "B" and "B" thereafter claims benefit of the infancy period, though carrying on the same business albeit under different name and ownership and which benefits were already availed of by the original owner "A". Later, the same establishment is taken over by "C" and "C" also then claims to the benefit of the infancy period. And so on ad infinitum. Such surely is not the object of section 16 of the Act. But such could well be the result if the petitioner's claim for the benefit once again of the infancy period already availed of the original company, is accepted. Repeated grant of the benefit of the infancy period to different successive entities qua an establishment already previously set up and which had already availed of the infancy period, would defeat and render infructuous the beneficial provisions of the Act. It has been found by the authorities that the original company was a viable unit and it was a viable unit that was taken over. What is more, machinery was not sold by the original company but was only given on lease to the petitioner company. Still further, most of the workers employed by the original Company were also taken over by the petitioner Company. These workers receiving benefit of the act would abruptly lose the same for the duration of the fresh infancy period if granted to the petitioner Company as claimed.

5. Learned Counsel Mr. Bhatkal invited our attention to a ruling of the Supreme Court in *The Provident Fund Inspector, Trivandrum Vs. The Secretary, N.S.S. Co-*

operative Society, Changanacherry, . The case is clearly distinguishable. The press there was sold away; the machinery here was given on lease. The machinery of the press there was altered; the machinery here remained the same. The workers there were not continued; the workers here were continued in employment compensation was paid to the workmen there at the time of the sale by the previous owner; there is in such evidence here. Besides this very authority was referred to by the Supreme Court Sayaji Mills Ltd. Vs. Regional Provident Fund Commissioner, and distinguished. The Supreme Court has therein also referred to several other rulings in paragraph 7 of its judgment following the view of Tendolkar, J., (of this Court) in Chaggaanlal Textile Mills Pvt. Ltd. v. P.A. Bhaskar), to the effect :---

"Even a complete change in the whole body of employee cannot make a factory which is establishes, ceased to be established. In any event the Employees" "Provident Funds Act is a beneficial legislation for the benefit of the employees and every construction of its provisions which would defeat the object of the legislation and lead to an evasion must be rejected, unless the clear language of the Act leaves no portion to the Court but to accept such an interpretation".

The Supreme Court also observed---

"The Act being a beneficant statute and section 16 of the Act being a clause granting exemption to the employer from the liability to make contributions, section 16 should receive a strict construction. If a period of three years has elapsed from the date of the establishment of a factory, the Act would become applicable provided other conditions are satisfied. The criterion for earning exemption u/s 16(1)(b) of the Act is that a period of three years has not elapsed from the date of the establishment of the factory in question. It has no reference to the date on which the employer who is liable to make contributions acquired title to the factory".

And further---

"....the Act has been brought into force in order to provide for the institution of provident funds for the benefit of the employees and establishments. Article 43 of the Constitution requires the State to endeavour to secure by suitable legislation or economic organisation or in any other way to all workers, agricultural, industrial or otherwise among other conditions of work ensuring a decent standard of life and full enjoyment of leisure. The provision of the provident fund scheme is intended to encourage the habit of thrift amongst the employees and to make available to them either at the time of their retirement or earlier, if necessary, substantial amounts for their use from out of the provident fund amount standing to their credit which is made up of the contributions made by the employers as well as the employees concerned. Therefore, the Act should be construed "so as to advance the object with which it is passed. Any construction which would facilitate evasion of the provisions of the Act should as far as possible be avoided."

6. In *Bharat Board Mills Ltd. Vs. The Regional Provident Fund Commissioner and Others*, , it was held that the date of establishment of a factory is the date when the factory starts its manufacturing process. The fact that a new Company or concern subsequently takes over or acquires the factory does not shift the date of establishment of the factory to the date of its taking over or acquisition. In *Jamnadas Agarwalla v. The Regional Provident Fund Commissioner* AIR 1963 Cal 513, the same principles was reiterated vide paragraph 12 of the judgment. This view also finds support in the Supreme Court's ruling in *Sayaji Mills* case *supra*. Moreover, even if the view urged by Mr. Bhatkal can at all be said to be nevertheless a possible view of the matter, there should be no doubt that the view, which furthers the objectives of the Act and the directive principles embodied in the Constitution, must be given effect to.

7. It is well remember that the Act is a benevolent piece of legislation. It provides for the institution of provident fund, family pension fund and deposit-link insurance fund for employees in factories and other establishments. The focus of the benevolent objects is the employee and his welfare. Subject to section 16, the Act applies to every establishment comprehensively covered by sections 1(3) and (4). And once the establishment is so covered, it shall, by virtue of section 1(5) continue to be so covered notwithstanding that the number of employees therein at any time falls below twenty. The coverage, therefore, is co-extensive with the life of the establishment. Section 16 is an exemption provision. It must, therefore, be strictly construed. An establishment once set up, the statutory infancy period commences to run. Subsequent changes of location, ownership, management or control makes no difference and does not result in extension of the date on which the establishment is or has been set up nor will it result in benefit once again of the infancy period already availed of by the establishment. Any other interpretation will leave the door wide open for ingenious evasion of the Act. Judicial interpretation of a welfare legislation must be geared to its fulfilment and not its frustration. Welfare legislation must be liberally construed so as to advance and not retard its benevolent purpose, so as to widen and not restrict its legitimate coverage. In all the circumstances therefore, the impugned orders are well justified and deserve to be upheld.

8. On the amount, we have as annexure "M" to the petition the figures of Rs. 24,269.00 under account No. I and Rs. 4,143.50 under No. II account making a total of Rs. 28,412.50. This is a statement based upon extensive details given by the petitioners in their annexure and chart to this petition. There is no return filed. Even in this course of hearing the respondents' learned Counsel Mr. Desai did not challenge these figures. In the circumstances, we see no good reason for nevertheless sending back the matter only for the purpose of determining the undisputed amounts. We are inclined to accept the uncontroverted figures *supra* and which have remained unchallenged all these eight years and more before this Court. In the circumstances, we direct the petitioners to deposit with the Regional Provident Fund Commissioner Rs. 28,412.50 latest by 31st October, 1988. In default, the said amount shall then be deposited with interest thereon

from today till actual payment at the rate of 18% per annum in addition to such penalty or penalties as the petitioners may become liable to pay such default.

9. In the result, and subject to the direction in the penultimate paragraph of this judgment, this petition fails and the same is dismissed. Rule stands discharged but, in the circumstances with no order as to costs.