
(1956) 06 BOM CK 0012
In the Bombay High Court

J.G. Vakharia

APPELLANT

Vs

Regional Provident Fund Commissioner

RESPONDENT

Date of Decision : 28-06-1956

Acts Referred:

Bombay Industrial Relations Act, 1946 — Section 11(1)

Citation : (1957) 1 LLJ 448

Hon'ble Judges : Chagla, C.J.;Dixit, J

Bench : Division Bench

Judgement

Chagla, C.J.—This petition discloses a rather glaring attempt at resorting to a subterfuge in order to defeat the law and the question that we have to consider is whether the subterfuge has succeeded and whether the subterfuge should be permitted in order to circumvent the law of the land. The petitioner is the father of two major and two minor sons. In October 1949 there was a partnership between the petitioner and his father in the name of Standard Silk Mills and this partnership was doing business of manufacturing silk and dealing in silk yarn and silk cloth. Although the partnership was commenced in October 1949, the actual business of manufacturing silk was started from 13 November 1950. It seems that subsequent to 1950 the father died and there was new partnership sometime in November 1951 consisting of the petitioner and his two major sons. On 22 October 1953 this partnership purported to close its manufacturing business and it entered into an agreement which is dated 24 October 1953 which sets out the fact that the business of manufacturing silk was being closed on account of slackness in business and on account of lack of purchase of goods and on account of financial difficulties and therefore this business was being discontinued from 22 October 1953. This agreement further recorded that in future if any of the parties wanted to start any department, that party would be entitled to start that department of his own accord and at his own costs by executing rent notes to the partnership firm of Standard Silk Mills. Lest anyone should throw any doubt either on the sanity of the parties to this agreement or to the wisdom of the transaction which it was evidencing, at the foot of the

agreement it is solemnly stated that the parties were signing this agreement without any intoxication. It is the case of the petitioner that subsequent to this agreement five units were started which did manufacturing processes which were being originally done by the Standard Silk Mills, and these units were:

- (1) Naranjan Weaving Works,
- (2) Jayant Weaving Works,
- (3) Govind Throwing Works,
- (4) Tara Processing Works, and
- (5) Hemu Finishing and Dyeing Works.

In respect of these five units five rent notes were executed in favour of the Standard Silk Mills by the petitioner and his four sons, two of whom were minors. It also appears that the licence issued to the Standard Silk Mills under the Factories Act was surrendered and separate licences were issued to the five units and u/s 11(1) of the Bombay Industrial Relations Act all these five units were recognized as five separate undertakings. It is also the case of the petitioner that there were separate assessments of these five units.

2. On these facts the petitioner contends before us that there is no factory now in existence to which the Employees' Provident Funds Act can apply, and therefore the demand made by the Regional Provident Fund Commissioner upon him to pay the contribution necessary under that Act is an illegal demand. The Employees' Provident Funds Act was passed in 1952 and under Sub-section (3) of Section 1, it applied in the first instance to all factories engaged in any industry specified in Schedule I in which fifty or more persons are employed, and it is not disputed that the factory in question is engaged in the industry specified in Schedule I. But the contention of the petitioner is that if these five units are to be treated as separate units, then none of these units employ fifty or more persons. Attention is also drawn to Section 16 which exempts from the operation of the Act under Sub-section (b) any other factory, established whether before or after the commencement of the Act, unless three years have elapsed from its establishment. These factories are known as infant factories and the contention of the petitioner is that as these five factories came into existence on 4 November 1953, they are infant factories and the Act cannot apply to them. The answer given by the Regional Provident Fund Commissioner is that the factory to which the Act is sought to be applied is the Standard Silk Mills. Admittedly it came into existence on 13 November 1950; admittedly if that factory is looked upon as a factory constituted by all the five units now separately working, it employs more than fifty workers, and therefore, three years after it came into existence the Act applied to it and there is a liability upon that factory to make the contribution to the employees' provident fund as laid down in the Act.

3. There are certain striking and salient facts in this case to which attention must be drawn. The five units which it is suggested constitute five separate factories

are all run by members of one undivided family. In the first place, there is the father himself, the petitioner and then we have not only the two major sons but also the two minor sons. The premises in which these so-called factories are being run continue to belong to the partnership formed of the Standard Silk Mills and even the machinery for the different processes also belongs to the partnership. The Standard Silk Mills originally did the work of various processes which resulted in the manufacture of silk and it also sold yarn and cloth. Those very processes in identical condition and in identical location are being carried on with only this difference that instead of those processes being carried on by the Standard Silk Mills they are now allowed to be carried on by five separate units. In this connexion it is important to draw attention to the rent notes that were signed by the five persons who were running these five units. There is no lease of the premises at all. The only lease is of the machinery and even this lease is not for any specific duration, but the lease agrees to hand over possession of the said machineries as and, when demanded without any notice and dispute. If the lessee does labour work on the machineries taken on lease, then they agree that the first preference would be given to the lessor and it is only if the lessor cannot afford to give the lessee labour work that the lessee would be entitled to do the labour work of somebody else. A right is also expressly reserved for workmen working in one part of the premises going to another. Therefore, this lease excepting the clever device or subterfuge does not bring about any change whatsoever in the conditions that prevailed before this lease was executed and subsequent to it. The same machinery is being used for the same purpose. Instead of the Standard Silk Mills manufacturing silk by different processes, the silk is being manufactured by the very same processes in the very same machinery by these five units artificially set up which are under a clear obligation to manufacture silk by various processes on behalf of what might be called the parent company.

4. It is also significant to consider the reason given by the petitioner for closing the Standard Silk Mills. In the first place, the date of closure itself leads to a clear inference as to the reason for bringing about this change. 13 November 1950 is the date when the factory started working. Three years would have elapsed on 12 November 1953 and about a month before that eventful date the partners of the Standard Silk Mills decided to work the factory not as it was being worked but in a different way but for the same results and for the same purpose. Now it is difficult to understand how we can be asked seriously to accept the reason given by Mr. Vimadalal for closing this factory and the reason given is, as appears from the agreement to which reference has been made already, that it was because of losses incurred that the partners decided to close this part of their business. We would have understood the reason if this business had been sold to some other person. We would have understood if the Standard Silk Mills had nothing whatever to do with manufacturing of silk. But when this business is divided between the members of the same family?between the father and four sons?surely it could not have been expected that the same business being run by

five units would be cheaper and likely to produce more profits than the same business being run by one unit and as we have pointed out, it is not left to these units to do such business as they like. In the very forefront of the lease to which reference has been made it is stated that the units must first do the work given to them by the partners. Therefore, in no sense of the terms could it be said that the partnership ceased to do the work of manufacturing silk. The work continued and it continued on the same machinery and by means of the same processes. Under the circumstances it is difficult to understand how it could be said that the reason for closing the partnership was losses incurred by the partners, and as a matter of fact, as Mr. Seervai has drawn our attention to the fact, in a letter written by the labour officer on behalf of the petitioner, dated 14 May 1955, to the Secretary, Ministry of Labour, Government of India, New Delhi, the reason for closing this partnership was not the incurring of losses but the fact that the partners could not carry on the business of the concern smoothly and there were some troubles among themselves. It should be noted that these partners were the father and the two sons and leases were given to these very sons to carry on the processes resulting in the manufacture of silk which the Standard Silk Mills was originally doing. Therefore, in our opinion, it is clear that the factory originally started on 13 November 1950 did not cease to function and on a true view of the transaction five new factories did not come into existence on 4 November 1953 and the same original factory continued and continue to function till to day. These five units are not independent units they are clearly interdependent and between them they carry on the same processes which the Standard Silk Mills was carrying on and the processes are carried on for the benefit of the Standard Silk Mills and for no one else.

5. Mr. Seervai has also drawn our attention to the definition of "employee" in the Act which inter alia means any person who gets his wages directly or indirectly from the employer. Now, even if it could be said that the employees of these five units do not get their wages directly from the Standard Silk Mills, they certainly get them indirectly from these mills because these employees are employed to carry out and execute the work given to these units by the Standard Silk Mills and although the hand which might pay these employees may be the hand of the particular individual in charge of any one unit, in the real sense of the term these wages are paid for by the Standard Silk Mills for whose purpose these employees are employed. Mr. Vimadalal urged upon us that although the transaction may look odd?and he was describing it rather mildly?even so if legally five units could exempt themselves from the operation of the Act, then no liability should be imposed upon them merely because the court may not approve the manner in which the transaction was effected. It is well-settled canon of taxation law that a subject is entitled to avoid paying tax if legally he can do so. Even that canon is looked at rather askance in the context of times that we are living in, but the Act that we are dealing with is not a taxation law. It is a social legislation and the canon of construing a social legislation is very different from the canon of construing a taxation law. The court must not countenance any subterfuge which

would defeat the provisions of a social legislation and the court must even if necessary strain the language of the Act in order to achieve the purpose which the legislature had in placing this legislation on the statute book. Therefore, not only the court must disapprove all subterfuges to defeat a social legislation but must actively try to prevent such subterfuges succeeding in their object. In our opinion, this is a clear case of a subterfuge and this subterfuge cannot be permitted to succeed so as to defeat the of the rights employees who are benefited by the Employees' Provident Funds Act.

6. The result is that the petition fails and must be dismissed with costs.