(1997) 07 KAR CK 0039

In the Karnataka High Court

Case No : Writ Petition No. 19602 of 1989

K. Krishnamurthy Bhat APPELLANT

Vs

The Regional Provident Fund Commissioner, Mangalore RESPONDENT

Date of Decision : 24-07-1997

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 16(1)(D)

Citation : (1997) 7 KarLJ 712

Hon'ble Judges : G. Patri Basavana Goud, J

Judgement

1. One Vasudeva Rao was running a hotel in the name and style of M/s. Hotel Hariprasad in the premises belonging to one Smt. B. Fatima with effect from 19-7-1975. He closed the hotel on 30-3-1978 and surrendered the vacant possession of the premises to the landlady. From the said landlady, the present petitioner Krishnamurthy Bhat took over the premises (as admitted in the cross-examination of Enforcement Officer-Ramanand at Annexure-C) and started a hotel of his own in the very name and style. The Provident Fund Inspector has, on the date of the inspection on 6-3-1982, found that the establishment had employed more than 20 employees and as such, was to be covered under the Employees'' Provident Funds and Miscellaneous Provisions Act, 1952 (''Act'' for short). On this report at Annexure-H, the respondent viz., the Regional Provident Fund Commissioner held an enquiry under Section 7-A of the Act. Two contentions were put forth on behalf of the petitioner: one was that he had started the Hotel afresh from 14-4-1978 and that he was entitled to infancy protection under Section 16(1)(d) of the Act. The respondent held that the starting of the Hotel has to be taken from 19-7-1975 when Vasudeva Rao had started it, and not from 14-4-1978 when Krishnamurthy Bhat allegedly took it over from the said Vasudeva Rao and as such, the infancy protection under Section 16(1)(d) of the Act was not available to the petitioner. The second contention put forth on behalf of the petitioner was that, among the employees that the respondent had considered as exceeding 20, two were petitioner''s brothers who were not working for remuneration and as such, excluding the said

two brothers, the total number of employees would come below 20 and as such, the establishment was not required to be covered under the Act. The respondent, on facts, held that the said two brothers also were employees working for remuneration and as such, the total number of employees exceeds 20, and the petitioner''s establishment had to be necessarily covered under the Act. With these conclusions, the respondent, after an enquiry under Section 7-A of the Act, passed an order dated 28-10-1989 at Annexure-A holding that infancy protection under Section 16(1)(d) was not available to the petitioner''s establishment, that the two brothers also were employees and as such, the total number of employees exceeded 20, and that the petitioner had to make contributions for the period from November 1980 to December 1986. Since, under Annexure-A, the liability is fastened on the petitioner upto December 1986, it is additionally urged here that the petitioner also having closed down his establishment with effect from 29-12-1985 at at Annexure-K3, Annexure-A is required to be quashed on this additional ground also, since it seeks to fasten the liability on the establishment upto December 1986 when it had been closed down in December 1985 itself. On the two grounds urged before the respondent earlier and on this additional ground, Annexure-A is sought to be quashed in this writ petition under Article 226 of the Constitution.

2. Firstly, the facts as established. M/s. Hotel Hariprasad was initially being run by Vasudeva Rao w.e.f. 19-7-1975, he having taken the concerned premises on lease from the landlady Smt. B. Fatima. On 30-3-1978, the said Hotel was closed down by Vasudeva Rao. The vacant premises was also surrendered by Vasudeva Rao in favour of landlady Smt. B. Fatima. From the said landlady, present petitioner-Krishnamurthy Bhat took over the said premises. The petitioner happened to be a relative of Vasudeva Rao. He also purchased the furniture and utensils from the said Vasudeva Rao, though Sri A.G. Holla, learned Counsel for the petitioner, submits that it was purchasing of new furniture and utensils, but, in the name of Vasudeva Rao. Petitioner then started the Hotel in the same premises 14 days thereafter i.e. on 14-4-1978, but, in the same name. No previous employees were re-employed. All employees were fresh employees.

3. Though the Provident Fund Inspector visited the hotel on 6-3-1982 and found employees exceeding 20, under Annexure-A, the coverage is held to have taken effect from November 1980.

4. The infancy protection period being available in respect of an establishment employing above 20 and less than 50 persons for five years, if Vasudeva Rao had continued the establishment which he had started on 19-1-1975, then, the infancy protection period would have been available to him upto July 1980. The Provident Fund Inspector found the number of employees exceeding 20 in the hotel concerned in November 1980. That is how under Annexure-A, the coverage is stated to have commenced from November 1980.

5. In the above factual background, the question arises this way; if the establishment is held to be the same even though it is being now run by the

petitioner, then, the petitioner could be liable to make necessary contributions from November 1980 onwards because, the infancy protection period would have started on 19-7-1975 itself when the hotel was commenced for the first time by Vasudeva Rao and not from 14-4-1978 when it was commenced by the petitioner. On the other hand, if the Hotel commenced by the petitioner on 14-4-1978 is to be taken as a new establishment, then, the five year infancy protection would extend upto April 1983. Therefore, even if more than 20 employees had been there in November 1980, the establishment could not be covered, and in that event, Annexure-A cannot be sustained.

6. The learned counsel for the respondent Sri Harikrishna S. Holla refers to several decisions to urge that the infancy protection period under Section 16(1)(d) relates to an establishment and not to the person who owns the establishment. In R. Ramakrishna Rao v State of Kerala, AIR 1968 SC 1367, the Supreme Court pointed out that the infancy protection period is intended to get a breathing time to new establishments and not to an establishment which is also old and well founded. In Sayaji Mills Limited v Regional Provident Fund Commissioner, AIR 1985 SC 323, the Supreme Court pointed out that once the factory goes into production, a temporary cessation of its activity for whatever reasons cannot take the factory out of the category of an established factory for the purposes of the Act. There can be no disputing the proposition as laid down by the Supreme Court in these decisions. Sri Harikrishna S. Holla, learned Counsel for the respondent, with reference to the facts, refers to a decision of the Division Bench of this Court in Sutaria Automobiles, Hubli v Regional Provident Fund Commissioner in Karnataka, Bangalore, 1976(1) Kar. L.J. 511. I shall presently refer to the facts of the said case since, on another set of facts, the learned Counsel for the petitioner Sri A.G. Holla has referred to another decision of a Division Bench of this Court in Regional Provident Fund Commissioner and Another v Smt. B. Rukmini K. Shetty, 1990(2) Kar. L.J. 151, to the facts of which also, I shall refer.

7. On facts of the present case, as earlier noticed, except that petitioner is related to the previous hotel owner Vasudeva Rao, and except that the utensils and furnitures of Vasudeva Rao are taken by the petitioner, there is nothing else in common. The petitioner, no doubt, has started the Hotel in the same name and style in which Vasudeva Rao had been running. But, one significant factor is that Vasudeva Rao had closed down his hotel on 30-3-1978. He had not assigned a running concern to the petitioner. He had not even retained the vacant possession of the premises with him, to make it over to the petitioner. He had surrendered it to the owner Smt. B. Fatima. It was from that landlady that the petitioner took the premises, as admitted in the cross-examination of a subordinate of the respondent authority. The mere fact that name of the hotel was continued and the fact that the utensils and furnitures of Vasudeva Rao were taken over by the petitioner, in my opinion, cannot lead to the conclusion that the petitioner bought a running concern from Vasudeva Rao. In that event, there should have been some arrangements between the petitioner and Vasudeva Rao,

and there would not have been an occasion for the vacant possession of the premises being given to the landlady, to be taken by the petitioner 14 days thereafter from the said landlady. It was not even a case of all previous employees being continued by the petitioner. In no way has Vasudeva Rao been benefited, except with regard to the disposal of furnitures and utensils. When somebody closes down his hotel and when another man starts another hotel, there is nothing strange in that another man purchasing the furnitures and utensils of a closed hotel. On facts, therefore, it cannot be said that the same establishment of Vasudeva Rao has continued, the change of ownership being only as an attempt to get over the contributions under the Act.

8. In the decision of the Division Bench of this Court referred to by Sri Harikrishna S. Holla, learned Counsel for the respondent, M/s. Sutaria Automobiles Private Limited, a company registered under the Company''s Act, it was carrying on business of spare parts and the appellant before purchased the running concern for valuable consideration under a Deed of Assignment dated 1-1-1971, the previous employees of the company having resigned on 31-12-1970, immediately being taken on duty by the appellant on the very next day i.e. on 1-1-1971. It was in these circumstances that the establishment was held to be an establishment continued for the purpose of coverage under the Act.

9. In the decision being relied upon by Sri A.G. Holla, learned Counsel for the petitioner, the facts are similar to the facts of the present case. A hotel by name Hotel Shivaprasad was being run in Kundapur. The landlord recovered possession of the vacant premises by obtaining an eviction decree against the tenant who was running hotel therein. Thereafter, the landlord leased the premises in favour of one Smt. Rukmini Shetty who started the hotel in the same name and style viz., as Hotel Shivaprasad. She recruited new employees. None of the previous employees were continued. Nevertheless, the Regional Provident Fund Commissioner, in an enquiry held under Section 7-A of the Act, declined infancy protection under Section 16(1)(d) to that establishment of Smt. Rukmini Shetty. A Division Bench of this Court held that, on the facts and in the circumstances of that particular case, the establishment has to be taken as having been started by Smt. Rukmini Shetty afresh, and that the said establishment was entitled to protection under Section 16(1)(d) of the Act.

10. As said earlier, the facts of the present case are similar to those that the Division Bench was dealing with in the said case of Smt. Rukmini Shetty.

11. For the reasons earlier stated and in the light of the principles enunciated by the Supreme Court in the decisions referred to above, and following the decision of the Division Bench of this Court in Smt. Rukumini Shetty''s case based on facts similar to the present case, and distinguishing another decision of the Division Bench in Sutaria Automobiles, supra, on facts, I have to conclude that the decision of the respondent as at Annexure-A to the effect that the establishment started by Vasudeva Rao on 19-7-1975 has continued, and as such, infancy protection period under Section 16(1)(d) of the Act must be taken

as having come to an end in July 1980 even in respect of the hotel started by the petitioner, cannot be sustained, and Annexure-A to that extent needs to be quashed. In view of this conclusion, the further question as to whether two brothers of the petitioner have been wrongly construed as employees, and the next question as to whether, notwithstanding closure of hotel in December 1985, the liability is fastened even upto December 1986, would not arise for consideration. As and when the infancy protection period comes to an end in terms of this order i.e. the present order in this writ petition, the respondent may proceed to determine, in a fresh enquiry under Section 7-A of the Act, as to the liability of the petitioner for the period it was running the hotel after the infancy protection period ended and till it was closed down.

12. With this liberty, the petition is allowed and the impugned order at Annexure-A is quashed.

