(1997) 04 P&H CK 0050

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No. 2434 of 1983

Kapoor Rubbers Pvt. Ltd. — APPELLANT

Vs

Regional Provident Fund Commissioner and Another — RESPONDENT

Date of Decision : 01-04-1997

Acts Referred:
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 16(1)

Citation : (1999) 3 LLJ 20 : (1997) 117 PLR 40

Hon'ble Judges : T.H.B. Chalapathi, J

Bench : Single Bench

Advocate : R.L. Chopra, for the Appellant; Rajesh Bindal, for the Respondent

Final Decision : Dismissed

Judgement

T.H.B. Chalapathi, J.—The petitioner-M/s Kapoor Rubbers Private Limited was a company incorporated in the year 1974 and in December, 1977 they got the machinery of Organo Chemical Industries on lease and started the production in January, 1978. By a letter dated October 28, 1980 the Assistant Commissioner of the Regional Provident Fund Commissioner directed the petitioner company to deposit the Provident Fund dues in respect of all the eligible employees with effect from May 1, 1980. The representation of the petitioner company was considered by the Regional Provident Fund Commissioner, who by his order dated September 14, 1982 held that -- Kapoor Rubbers Private Limited is coverable under the Employees'' Provident Fund and Miscellaneous Provisions Act, 1952 with effect from December, 1977 and the proceedings u/s 7-A of the Act for determination of the dues payable by the said company shall continue.

2. Aggrieved by the said order, the petitioner filed this writ petition.

3. According to the learned counsel for the petitioner, though the petitioner-company was incorporated in the year 1974, it took over the machinery of Organo Chemical Industries on lease in December, 1977. Therefore, their line of activities has to be treated as a new Establishment and, therefore, they are

entitled to the benefits u/s 16(1)(b) of the Act which reads as follows:

"Section 16. Act not to apply to certain establishments - (1) This Act shall not apply

....

(b) to any other establishment employing fifty or more persons or twenty or more, but less than fifty, persons until the expiry of three years in the case of the former and five years in the case of the latter, from the date on which the establishment is, or has been, set up.

It is an admitted fact that the petitioner company as well as Organo Chemical Industries were in existence prior to 1977. Admittedly, the petitioner-company took the machinery of Organo Chemical Industries on lease in December, 1977 and started its factory from January, 1978. The only point to be considered here is whether the functioning of Organo Chemical Industries continued under the new management of the petitioner-company or whether the petitioner-Company started a new establishment with the machinery of Organo Chemical Industries. There is no evidence to show that Organo Chemical Industries were closed and there was no manufacturing activities in the company prior to taking over of the machinery by the petitioner-company on lease in December, 1977. Admittedly, the petitioner-company has taken over the machinery of Organo Chemical Industries and started the production. Thus, at the most, it can be said that there is a change in management. But the change of management of an establishment does not attract Section 16(1)(b) of the Act. Since that does not amount to starting a new Establishment, therefore, such a change of management does not secure a further period of protection u/s 16(1)(b) of the Act. In fact, Section 16(1)(b) is intended to protect the persons connected with the management of a company. The real test is whether the industry or an establishment is started afresh so as to get the benefit u/s 16(1)(b) of the Act. The provision is only to protect the new industries, but not the existing industries. Though the industry has changed hands, it is different thing if old industry ceased to function and closed down for ever and somebody purchased the machinery and starts the production. That is not the case here. The petitioner has taken the machinery to run a unit on lease and continued the manufacturing process with the same machinery. Therefore, I am of the opinion that the writ petition is devoid of any merit and is liable to be dismissed.

4. The writ petition, therefore, fails and is accordingly, dismissed. No order as to costs.