

(2014) 07 CHH CK 0037
In the Chhattisgarh High Court
Case No : Writ Petition No. 5613 of 2005

Manav Mandir Hotel

APPELLANT

Vs

Regional Provident Fund Commissioner

RESPONDENT

Date of Decision : 15-07-2014

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 1(3)(a),
2(A), 7A, 7-A, 7B
Evidence Act, 1872 — Section 106

Citation : (2014) 142 FLR 1082 : (2014) 3 LLN 361 : (2014) LLR 1088

Hon'ble Judges : Prashant Kumar Mishra, J

Bench : Single Bench

Advocate : Ashsih Shrivastava and Animesh Verma, Advocate for the Appellant;
Pradeep Saxena, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Prashant Kumar Mishra, J.

1. Challenge in this petition is to the order dated 24-08-1999 (Annexure P-4) passed by the respondent No. 1/Regional Provident Fund Commissioner (for short "the RPFC") in a proceeding u/s 7A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (for short "the Act, 1952") and the appellate order dated 18-07-2005 (Annexure P-7) passed by the Employees Provident Fund Appellate Tribunal, New Delhi (for short "the Tribunal") holding that the provisions of the Act, 1952 is applicable to the petitioner establishment by clubbing it with Manav Mandir Hotel, Manav Bhojanalya and Uttam Sweets for the purpose of employment strength and is, thus, coverable under the Act, 1952 w.e.f. 01-06-1978.

2. The matter had earlier traveled up to the High Court when the petitioner challenged the order passed by the RPFC on 08-02-1983 to the same effect, which was challenged by the petitioner by filing W.P. No. 320 of 1983. In the earlier round of litigation also, enquiry was conducted by the RPF inspector and

by the RPFC finding that in the same building business activities are being carried out in the following name and style:

- i. Manav Mandir Hotel (for short "MMH")
- ii. Manav Bhojanalya (for short "MB")
- iii. Uttam Sweets (for short "US")

3. The above three concerns are run by partners belonging to the same family and all the partners are common, although they are registered separately under the Madhya Pradesh Shops and Establishments Act, 1958 (for short "the Act, 1958"). Pursuant to the enquiry, a report was submitted to the following effect:

This hotel is being run in premises having 3 sub divisions viz.

- (i) Manav Mandir Hotel Reg. No. 1656 dt. 3.3.1964.
- (ii) Manav Bhojnalaya Reg. No. 828 of 63/64 dt. 26.9.63.
- (iii) Uttam Sweets Reg. No. 10 of 1977

The list of partners are as under-

Premises Manav Mandir Building cinema chowk, Rajnandgaon.

The details are shown in the enclosed map. There are no partition walls even to show that it is a separate establishment. Besides this there is a separate place where all preparations are made just as sweets, bhajiya or vegetables etc. which are commonly used by bhojnalaya or hotels or sweets house. There is also a separate stall known as Manav Mandir Chat Corner. The sweets are generally used in all the corners. Whenever there is shortage of staff, the staff of one establishment is engaged in the other.

If the total strength is taken into consideration it excess 20. Moreover the partners are of the same family and they are living as joint family. Moreover the strength is also a common thing.

If the situation in which the business is being run is seen from the map, it will be very clear that this is an artificial division and a fit come to be consideration for the purpose of coverage in the light of the C.P.F.C.'s D.O. under reference on the following points.

1. It is carried in the same premises having no separate partition walls even to establish the separate existence.
2. The partners are of the family i.e. father, sons and grandsons.
3. There are common services as the sweets are sold at the counter at the same time are also served in Bhojnalaya and Hotel.
4. In W.P. No. 320 of 1983, wherein, the order dated 08-02-1983 was challenged, the following operative order was passed by the High Court in para

15 thereof.

15. With the above observations, the petition is allowed. The impugned order (Annexure XIII) of the Regional Provident Fund Commissioner is hereby quashed. The case is remanded to the Regional Provident Fund Commissioner to refix the case for hearing before him and to hold a fresh enquiry in the matter after affording full opportunity to the petitioner to show cause in the matter. The Regional Provident Fund Commissioner shall also furnish all copies of the relevant reports of the Inspector to the Petitioner and also permit the petitioner to lead such evidence as is considered necessary in rebuttal. Since the matter is old, be advice the Regional Provident Fund Commissioner to start the enquiry at an early date and complete the same within reasonable time. In the circumstances, we make no order as to costs. The outstanding amount of security, if any, be refunded to the petitioner.

5. Pursuant to the above order of the High Court, the matter was again enquired and the RPFC passed an order dated 24-08-1999 (Annexure P-4), against which the petitioner preferred W.P. No. 2650 of 2000, which was disposed of by order dated 19-07-2000 (Annexure P-6) by relegating the petitioner to prefer an appeal before the Tribunal and at the same time, directing that no coercive steps shall be taken against the petitioner for recovery of the amount. The appeal preferred by the petitioner was dismissed by order dated 18-07-2005 (Annexure P-7). Thus, the original order passed after remitting as well as the appellate order are under challenge before this Court.

6. In view of the order passed by the High Court directing fresh enquiry u/s 7A of the Act, 1952, the RPF Inspector made an enquiry and submitted his report dated 30-03-1999 (Annexure-P/2), inter alia, finding the following:-

(a) Unity of ownership:- The constitution of firms vis-a-vis its members make it clear that three firms belong to members of one and the same family and the partners are common. Thus, there is perfect unity of ownership in existence in all the three firms.

(b) Unity of Management, Supervision and Control:- All the three firms belong to members of one family and are having common partners. Thus, this is sufficient to establish unity of management, supervision and control.

(c) Geographical Proximity:- All the three firms are functioning in one and same premises without any partition wall or door between MMH and MB. After closing of main gate/entrance one can easily move from MMH to MB and vice versa. Although there is a door between MMH and US, but this door remains open providing easy movement from MMH to US without passing the main gate/entrance. Thus, there exists absolute geographical proximity amongst all the three firms. The inspector attached sketch map of the ground floor of the premises in question.

(d) Unity of Finance:- Since all the three units are owned by the members of

same family, there is unity of finance as the funds/income are at the disposal of same persons and the same can easily be diverted to any of the firm.

(e) Unity of Employment:- The establishment did not produce correct monthly attendance register because the registers maintained are either incomplete or not traceable. In absence of current attendance register it is not possible to identify amongst the worker of particular firm except the person working on counters. All the three firms are situated in one and the same premises. MMH & MB do not have separate wall or door and US is internally connected with the other two firms. The unity of employment cannot be ruled out especially looking to the nature of business, location and failure on the part of the establishment in production of current months attendance register. Thus, the unity of employment is in existence amongst all the three firms.

(f) Functional Integrality:- All the three firms are engaged in the same line of business of preparation of namkeens, sweets, meals and other eatable items. Preparation made by all the three firms are very closely related to each other and can be supplied to the customers of any of the said firms. Thus, there is complete functional integrality.

(g) Unity of purpose general:- All the three firms belong to same family members, supervised, managed and controlled by same set of persons engaged in the same line of business, having very close geographical proximity. Thus, there is unity of general purposes in its existence amongst all the three firms.

7. A copy of the report dated 30-3-1999 was supplied to the petitioner whereupon the reply was submitted by the petitioner on 19-4-1999 (Annexure-P/3). The petitioner contested the findings of the enquiry by submitting that there is no unity of owner, management, supervision, control, finance and employment. After duly considering the report and the reply, the RPFC passed the impugned order dated 28-4-1999 quoting the judgment of the Supreme Court in Rajasthan Prem Krishan Goods Transport Co. Vs. Regional Provident Fund Commissioner, New Delhi and Others, and The Associated Cement Companies Limited, Chaibassa Cement Works, Jhinkpani Vs. Their Workmen, to hold that the petitioner is coverable under the Act, 1952 by clubbing it with MB & US. This order has been affirmed in the appellate order dated 18-7-2005 (Annexure-P/7).

8. It has been urged by the learned counsel for the petitioner that the enquiry was not conducted properly, no proper opportunity of hearing was afforded by the RPF Inspector, the findings recorded during the enquiry are perverse. Learned counsel has relied on the judgment of Bombay High Court in Sunder Transport and Another Vs. The Regional P.F. Commissioner, .

9. Per contra, learned counsel for the respondent No. 1 would submit that fresh enquiry was conducted in accordance with the directions issued by the High Court and proper & adequate opportunity of hearing was afforded. Learned counsel would submit that under the relevant provisions of the Act, 1952 the

onus to disprove the unity of ownership, management, supervision, control, finance and employment is on the establishment, however, since the petitioner has not discharged the onus, the order passed by the RPFC and the Tribunal do not call for interference.

10. u/s 7A of the Act, 1952 the RPFC may decide any dispute which arises regarding the applicability of this Act to an establishment and further determine the amount due from any employer under any provision of this Act and for the said purpose may conduct such inquiry as he may deem necessary.

11. Under sub-section (3) of Section 7A of the Act, 1952 the employer concerned has a right of reasonable opportunity in the enquiry. When the order is passed at the end of enquiry either regarding applicability of the Act or the quantification of the dues, the employer may prefer an appeal before the Tribunal or may apply for review u/s 7B of the Act, 1952.

12. While considering the nature of enquiry u/s 7A of the Act, 1952, the Supreme Court in Rajasthan Prem Kishan Goods Transport Co. (supra) held that the finding recorded by the RPFC after thorough enquiry and conclusion that on facts there was unity of purpose between the two entities in question and both were liable to be clubbed together for the purpose of determining the number of employees for the applicability of the Act, is a finding of fact. It is held thus in para 6:

6. The finding recorded by the Regional Provident Fund Commissioner is that there is unity of purpose on each count inasmuch as the place of business is common, the management is common, the letter heads bear the same telephone numbers and 10 partners of the appellant are common out of the 13 partners of the third respondent. The trucks plied by the two entities are owned by the partners and are being hired through both the units. The respective employees engaged by the two entities when added together, bring the integrated entities within the grip of the Act: so is the finding. Now, this finding is essentially one of fact or on legitimate inferences drawn from facts. Nothing could be suggested on behalf of the appellant as to why could the Regional Provident Fund Commissioner not pierce the veil and read between the lines within the outwardliness of the two apparents. No legal bar could be pointed out by the learned counsel as to why the views of the Regional Provident Fund Commissioner, as affirmed by the Central Government, be overturned.

13. In Regional Provident Fund Commissioner, Jaipur Vs. Naraini Udyog and Others, , similar order u/s 7A was under challenge. The Supreme Court held that mere fact that the entities were separately registered under the Companies Act and were represented separately by members of a Hindu Joint Family is inconsequential. It is held thus in para 2:

2. On the basis thereof, the appellant has called upon them to contribute the amount u/s 7-A of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (for short "the Act") holding that the above two concerns are

establishments within the meaning of Section 1(3)(a) of the Act. The Division Bench in the impugned order had held that they were registered under the Companies Act as two different individual identities, though they are represented by the members of the same family. Therefore, they are two independent companies. Both cannot be clubbed together for the purpose of levying contribution u/s 7-A of the Act. We have gone through the reasoning given by the High Court. We find that the High Court is wholly unjustified in reaching the above conclusion. It is true, as found by the High Court, that they are registered as two independent units and represented separately by the members of a Hindu Undivided Joint Family. Nonetheless the Commissioner recorded, as a fact, the functional unity and integrality between the two concerns. Consequently, the definition of "establishment" which was widely defined would encompass within its ambit the two units as an establishment for the purpose of the Act. Accordingly, the High Court had not considered in proper perspective the provisions of the Act which is a beneficial legislation to provide healthy security to the workmen. In the ultimate analysis the employer gets maximum out-turn of his production by ensuring health insurance to its employees which is the fundamental right to the latter.

14. In *L.N. Gadodia and Sons and Another Vs. Regional Provident Fund Commissioner*, the Supreme Court has held thus:

"22.....The only question is whether they are to be treated as two separate establishments or one establishment for the purposes of this act?

23. The petitioners have contended that the two entities are two separate establishments. They have tried to draw support from section 2(A) of the Act which declares that where an establishment consists of different departments or has branches whether situated in the same place or in different places, all such departments or branches shall be treated as parts of the same establishment. It was submitted that only different departments or branches of an establishment can be clubbed together, but not different establishments altogether. In this connection, what is to be noted is that, this is an enabling provision in a welfare enactment. The two petitioners may not be different departments of one establishment in the strict sense. However, when we notice that they are run by the same family under a common management with common workforce and with financial integrity, they are expected to be treated as branches of one establishment for the purposes of the Provident Funds Act. The issue is with respect to the application of a welfare enactment and the approach has to be as indicated by this Court in *Sayaji Mills Ltd.* The test has to be the one as laid down in *Associated Cement Companies* which has been explained in *Pratap Press*.

24. The Provident Fund Department had issued notice to the petitioners on 11.6.1990 on the basis of their inspection. It had relied upon the 1988 Audit Report of the petitioners. The petitioners had full opportunity to explain their position in the inquiry before the Provident Fund Commissioner conducted u/s 7A of the Provident Funds Act. The petitioners, however, confined themselves only to

a facile explanation. If according to them, the management, workforce and financial affairs of the two companies were genuinely independent, they ought to have led the necessary evidence, since they would be in the best know of it. When any fact is especially within the knowledge of any person, the burden of proving that fact lies on him. This rule (which is also embodied in section 106 of the Evidence Act) expects such a party to produce the best evidence before the authority concerned, failing which the authority cannot be faulted for drawing the necessary inference. In the facts and circumstances of the present case, the Provident Fund Commissioner was therefore justified in drawing the inference of integrity of finance, management and workforce in the two petitioners on the basis of the material on record."

15. In the case in hand, except for raising oral argument that no proper opportunity of hearing was afforded, learned counsel for the petitioner has not elaborated as to in what manner the RPF Inspector or the RPFC did not provide him sufficient opportunity of hearing while holding the enquiry. On the contrary, when copy of the report dated 30-3-1999 (Annexure-P/2) was served, the petitioner submitted its reply on 19-4-1999 (Annexure-P/3) without raising any plea that he was not given sufficient opportunity of hearing or that the petitioner was not allowed to put forth its case in course of enquiry. Thus, argument raised by the learned counsel for the petitioner has no foundational support.

16. For the foregoing, this Court has no hesitation in holding that since there was absolute unity of ownership, management, supervision, control, finance and employment, the RPFC has rightly held that the petitioner (MMH) is liable to be clubbed with MB & US for making it coverable under the Act, 1952.

17. As an upshot, the writ petition, being bereft of merit, is liable to be and is hereby dismissed.

18. There shall be no order as to costs.