
(1990) 09 MP CK 0024
In the Madhya Pradesh High Court
Case No : M.P. No. 320 of 1983

Manav Mandir Hotel

APPELLANT

Vs

Regional Provident Fund Commissioner

RESPONDENT

Date of Decision : 04-09-1990

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 2A

Citation : (1999) 3 LLJ 1415

Hon'ble Judges : D.M. Dharmadhikari, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.M. Dharmadhikari, J.—The only question involved in this petition under Article 226 of the Constitution is whether the provisions of the Employees' Provident Funds and Misc. Provisions Act, 1952 (in short the Act), can be made applicable to the establishment of the petitioner and whether the order passed by the Regional Provident Fund Commissioner on February 8, 1983 (Annexure XIII) holding the provisions of the Act applicable to the petitioner's establishment, is in accordance with law.

2. The facts now in dispute are that in the same building business activities are being carried out in the following three names and style:--

- (i) Manav Mandir Hotel,
- (ii) Manav Bhojanalya
- (iii) Uttam Sweets.

The above three concerns are run by partners of the same family and some of the partners are common. The three business concerns are separately registered for the purpose of M.P. Shops and Establishment Act.

3. The Regional Provident Fund Inspector issued show cause notice to the

petitioner and on the basis of information supplied as also on the basis of the own enquiry had prepared a report, a copy of which is annexed with the return as Annexure R III. The relevant contents of the report are as under--

"This hotel is being run in premises having 3 sub-divisions, viz,

(i) Manav Mandir Hotel Regd. No. 1656 dated March 3, 1964

(ii) Manav Bhojanalaya Reg. No. 828 of 63/64 dated September 26, 1963

(iii) Uttam Sweets, Reg. No. 10 of 1977

The list of partners are as under:--

Manav Mandir

1.

Mohanlal s/o Gangaram

2.

Shriram s/o -do-

3.

Purshottam s/o -do-

4.

Shivkumar s/o -do-

5.

Harish Kumar s/o -do-

Manav Bhojanalaya

1.

Gangaram s/o Bishwar

2.

Mohanlal s/o Gangaram

3.

Shiram s/o Gangaram

Uttam Sweets

1.

Shriram s/o Gangaram

2.

Purshottam s/o Gangaram

3.

Kishore Kumar s/o Mohanlal.

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 narrow place where ail preparations are made just as sweets, bhajiya or vegetables etc., which are commonly used by Bhojanalaya or hotel or sweet 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 the establishment is engaged in other, the emolument, strength is given below:

Manav Mandir Hotel

May 79

June

July

August

Sept.

Oct.

13

13

14

14

14

13

Manav Bhojanalaya

8

8

8

8

8

8

Uttam Sweets

April

May

June

July

August

12

12

12

14

12

If the total strength is taken into consideration it exceeds 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 case to be considered 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 one family i.e. father, sons and grandson.

(3) There are common services as the sweets are sold at counter at the same time and are also served in Bhojanalaya and Hotel."

4. On the basis of the above report of the Provident Fund Inspector and after granting opportunity of hearing to the petitioner, the Regional Provident Fund Commissioner, by the impugned order, came to the following conclusion:--

"It is, therefore, apprised to the representatives of the establishment that the geographical proximity interchange of the employees, common management and the work of all these three units are same, and therefore, it is correct to cover the establishment by clubbing all these three units as one for the purpose of E.P.F. and Misc. Provisions Act, 1952.

5. Learned counsel appearing for the petitioner challenges the impugned order of the Regional Provident Fund Commissioner, on the ground that the findings have been reached on facts against the petitioner treating all the three establishments as one common establishment without grant of due opportunity to the petitioner to place necessary facts by leading evidence and without holding any proper enquiry. The counsel also complained that the copy of report of the Inspector

was never made available to the petitioner to contest the same and if necessary to lead evidence in rebuttal. The order is, therefore, challenged on the ground of denial of reasonable opportunity to show cause against the order.

6. The learned counsel appearing for the respondents in reply, invited our attention to various show cause notices issued to the petitioner by the Department as also by the Inspector and the replies submitted by the petitioner pursuant to the said notices. According to the respondent, full opportunity to show cause and place all facts and material was afforded to the petitioner who also availed of the same and cannot, therefore, complain of denial of opportunity to contest the report of the Inspector as also the findings reached by the Regional Provident Fund Commissioner.

7. The learned counsel for the petitioner placed reliance on a decision of this Court in *Shivya Industries, Indore and Anr. v. Rashmikant, R. Shah and Anr.* 1984 M.P.L.J. 165, in support of his contention that he was entitled to effective opportunity to lead evidence in rebuttal against the material or information collected by the Regional Provident Fund Commissioner for arriving at an adverse conclusion. Reliance has also been placed on a decision in *The State Provident Fund Inspector Tiruchi v. Perinas* 1973 Lab. I.C. 183 in support of the contention that the report of the Provident Fund Inspector, without being allowed to be subjected to cross examination could not be relied on as a substantive piece of evidence. Reference has been made to a decision in the case of *Mohipal Singh Shankersingh Pawar and Anr., v. Regional Provident Fund Commissioner, Mysore, Bangalore* 1972 Lab. I.C. 1202 to contend that an employer can have two and more establishments in his control and if such one of them employs less than twenty persons, the provisions of the Act cannot be made applicable to any of the establishments.

8. In order to decide whether the provisions of the Act can be made applicable to the petitioner and whether all the three concerns can be treated as one common establishment for applying the provisions of the Act, the following provisions contained in Section 1(3)(a) & (b), will have to be examined:--

"1. Short title, extent and application

(1).....

(2)

(3) Subject to the provision contained in Section 26, it applies--

(a) to every establishment which is a factory engaged in any industry specified in Schedule-I and in which twenty or more persons are employed, and

(b) to any other establishment employing twenty or more persons or class of such establishments which the Central Government may, by notification in the official gazette, specify in this behalf."

Section 2A of the Act is in the nature of an explanation to Section 1(3) and reads

as under:--

"For the removal of doubts, it is hereby declared that where an establishment consists of different departments or has branches, whether situate in the same place or in different places, all such departments or branches shall be treated as part of the same establishment."

9. In the case of The Associated Cement Companies Limited, Chaibassa Cement Works, Jhinkpani Vs. Their Workmen, the Supreme Court had to consider the action as to what was one establishment for the purpose of Section 25 of the Industrial Disputes Act, 1947. In the above case, the Supreme Court said that the Act having not prescribed any specific test for determination of what is one establishment, it was necessary to fall back on such considerations as in the ordinary industrial or business shop determine the unity of an industrial establishment having regard to the scheme of the Act. It was observed as under:--

".....It is, perhaps, impossible to lay down say one test as an absolute and invariable test for all cases. The real purpose of these tests is to find out the true relation between the parts, branches, units, etc. If in their true relation they constitute one integrated whole, we say that the establishment is one, if on the contrary they do not constitute one integrated whole, each unit is then a separate unit. How the relation between the units will be judged must depend on the facts proved, having regard to the scheme and object of the witness..... Thus, in one case the unity of ownership, management and control may be the important test, in another case Tribunal integrality or general unity may be important test, and in all other cases, the important test may be the unity of employment. Indeed, in a large number of cases, several tests may fall for consideration at the same time. The difficulty of applying these tests arises because of the complexities of modern industrial organisation, many enterprises may have functional integrality; between factories which are separately owned, some may be integrated in part with units or factories having the same ownership and in part with factories or plants which are independently owned. In the midst of all these complexities it may be difficult to discover the real record of unity.

.....If the statute does not, however, say what constitutes one establishment, then the usual tests have to be applied to determine the true relation between the parts, branches, etc., namely, whether they constitute one integrated whole or not. No particular test can be adopted as an absolute test in all cases of this type and the word "establishment" is not to be given the sweeping definition of one organisation of which it is capable, but rather it is to be construed in the ordinary business or commercial sense."

10. From the above observations of the Supreme Court and in view of the provisions of Section 2A of the present Act, it can be said to have been settled as a legal proposition that if there is financial, managerial and functional integrality

between different units and one cannot exist without the other, they should be treated as one single unit. The mere fact that the premises where the three units are situated under three separate tenements and they are registered separately under enactments, would not be quite material in deciding the question as to whether the activities carried on in the three concerns form part of one and the same establishment. Section 2A of the Act has been introduced with a specific purpose that an artificial division of establishment, branches or departments as a camouflage, with a view to go put of the ambit of the Act should be legitimately ignored. An employer should not be permitted to deny the benefits of the Act to an establishment by creating artificial divisions in his establishments. The Act being a piece of social welfare legislation, enacted with a view to provide for the future of the employees after they have served the establishment, has to be considered in a benevolent manner so as to effectuate the aim and intent of the Act. In the case before us, therefore, it was incumbent on the part of the Commissioner to have himself investigated all relevant facts after grant of due opportunity to lead evidence in rebuttal to the employer.

11. It may be noticed that the Regional Provident Fund Commissioner has passed the impugned order on the basis of the report of the Inspector (Annexure R. III), which was never made available to the employer. The employer had in fact made a specific grievance about the same in his representation (Annexure) in which the demand of the copy of the report of the Inspector has been made in the following word--

"The above report of the Provident Fund Inspector is not correct and is misrepresentation of facts. With this view he appears to have sent to your good self a report No. 115 dated June 20, 1981 (as also previous report No. 737 dated November 9, 1978) which has created confusion and misunderstanding in the matter. The reference of the said two reports find place in your letter No. PPC/3720/MP/Cov/R.1/1212 dated October 19, 1981 to us.

We have not been supplied with copies of the said reports and hence we are ignorant of the contents thereof and consequently unable to rebut them which seems to be a back bone of i the matter. Hence we request your good self to supply us copies of the said reports earlier and oblige, for our information and needful."

12. Inspite of the above specific grievance, the Commissioner, in his impugned order (Annexure R.IV) observed as :

"Though the letter dated February 22, 1983 is referred by the establishment but the same is " not found on record of the office as brought to my notice by Shri S.C. Sharma. The representative has been advised to submit the copy of the same."

However, it is noted from the O/O of the establishment that the establishment has raised the same objection which have been stated by representative of the establishment in today"s hearing.

Having thus ignored the grievance or objection raised by the petitioner for non-furnishing the copy of the report of the Inspector, the Regional Provident Fund Commissioner placed reliance on the said report or come to the conclusion that all the three concerns of the petitioner constitute one single establishment. It need not be emphasised that the Regional Provident Fund Commissioner, while exercising powers under the Act, particularly, on the question of applicability of the Act, acts in quasi judicial capacity. It is, therefore, incumbent on him to decide the controversy arising before him after grant of due opportunity to the party likely to be affected by his decision. It is also his duty to consider all relevant facts before him and pass a reasoned order. From the resume of facts given above it is clear that the Regional Provident Fund Commissioner committed a mistake in exercise of his jurisdiction by placing reliance on the report of the Inspector which was based on facts collected by him and which was not put to the employer for rebutting the same or leading evidence to controvert the same. The impugned order of the Regional Provident Fund Commissioner also shows that he had not applied, his mind to the facts of the case and did not arrive at conclusions based on the material or evidence lead before him. The impugned order of the Regional Provident Fund Commissioner, therefore, suffers from serious infirmity of denial of the opportunity to the employer to lead all relevant evidence in support of his case.

14. We have already stated the legal position with regard to the applicability of the Act. We have also referred to the decision of the Supreme Court as also provisions of Section 2A of the Act, in the light of which the facts have to be investigated and a decision has to be taken. If the facts that emerge after the enquiry show that the three concerns are mainly an artificial division of the same establishment of hotel business run by the family concerned, it would be reasonable and in consonance with law for the Regional Provident Fund Commissioner to hold that in fact all the three concerns form one establishment in which more than twenty workmen are employed and the provisions of the Act are applicable.

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, we (sic) expect 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.