
(2007) 12 DEL CK 0125
In the Delhi High Court
Case No : LPA No. 399 of 2007

M/s L. N. Gadodia and Son Pvt. Ltd. and Another	APPELLANT
Vs	
Regional Provident Fund Commissioner	RESPONDENT

Date of Decision : 20-12-2007

Acts Referred:

Citation : (2007) 12 DEL CK 0125

Hon'ble Judges : Sanjiv Khanna, J; Dr. M.K. Sharma, J

Bench : Division Bench

Advocate : Pramod, B. Aggarwala, with Dr. Manmohan Sharma, for the Appellant; R.C. Chawla, for the Respondent

Final Decision : Dismissed

Judgement

Dr. Mukundakam Sharma, CJ

1. The issue that arises for our consideration in this appeal is whether M/s. L.N. Gadodia and Son Pvt. Ltd. and M/s Delhi Farming and Constructions Pvt. Ltd shall be deemed to be a single entity with unity of management, supervision and control for the purpose of the Employees Provident Fund and Misc. Provisions Act, 1952 (hereinafter referred as "Act"). The Regional Provident Fund Commissioner after making an enquiry and considering the material placed before him held that both the aforesaid establishments have common management, supervision and control. It was held that there is unity among the establishments as they have common Managing Director, Director and employees. It was also held that there were financial transactions between the two establishments, they shared the same office and telephones numbers. Consequently, he passed an order dated 27.01.2000 holding that the employees' strength of M/s. L. N. Gadodia and Son Pvt. Ltd. and M/s Delhi Farming and Constructions Pvt. Ltd be clubbed together for the purpose of applicability of Act.

2. As against the aforesaid order of the Regional Provident Fund Commissioner an appeal was preferred before the appellate tribunal. The appellate tribunal by

order dated 25.10.2000 reversed the order passed by the Regional Provident Fund Commissioner by observing that these were two distinct companies having distinct legal identity, one was incorporated in 1930 and other in 1941 respectively. It was also held that company being a juristic person, shareholders of the companies are quite separate from the company itself and because of common manager and common managing director, two establishments cannot be clubbed together.

3. The Regional Provident Fund Commissioner, being aggrieved by the aforesaid findings recorded by the appellate tribunal under order dated 25.10.2000, filed a writ petition in this court, being WP(C) No. 5669/2001. The learned Single Judge considered the records and on consideration and appreciation thereof held that the unity among the establishments can be gathered from the fact that the entire business of both the establishments was being run by one family, the finances of one company were being used by the other and same persons were engaged by both the establishments. Consequent upon recording of the aforesaid findings, it was held by the learned Single Judge that the employees of M/s. L. N. Gadodia and Son Pvt. Ltd. and M/s Delhi Farming and Constructions Pvt. Ltd were rightly clubbed together for applying the provisions of the Act. The aforesaid findings recorded by the learned Single Judge have been assailed in this appeal, on which we have heard the learned counsel for the parties.

4. It was stated before us by the appellant that M/s Delhi Cattle farming Private Limited was incorporated under the Companies Act in the year 1930 having its registered office at 112, Kucha Natwa, Chandni Chowk, Delhi and the main object of the company was to acquire land for the purpose of cultivation and carrying on the other agriculture activities. After 1959 the company ventured into the business of purchase and letting of gas cylinders on hire and supply of security equipment to government of India. Subsequently, in the year 1983 the name was changed to M/s Delhi Farming and Constructions Pvt Ltd. and was carrying on its business and commercial activities at 116, Hans Bhawan, Bahadur Shah Zaffar Marg. However, in the present appeal it was mentioned that since 1992 it is operating from Flat No. 2, Khan Market, New Delhi which was registered as its registered office. With respect to M/s. L. N. Gadodia and Son Pvt. Ltd. it was stated that it was established and registered in the year 1941 having its registered office at 112, kucha Natwa, Chandni Chowk, Delhi and was involved in the wholesale trade of cloth. It was submitted before us by the appellants that there was a gap of 11 years between the date of incorporation of the two establishments, both of them are engaged in different businesses and are maintaining separate accounts, thus they are not inter-linked with each other in any manner.

5. On the other hand, the respondent reiterating the factual position, submitted that though both the units were incorporated in different years but there is functional integrity between them i.e. financial, labour as well as business integrity. He pointed out that not only the Managing Director, Director, place of

business, telephone and Gram number common to both the entities but as per the Enforcement officer's report, the employees register showed that in both the establishments two names i.e. Shri Venkateshwaran and Shri S. K. Shome were also common and both were employed in the capacity of Technical Manager and Commercial Manager respectively. Further as per Auditor's Report in respect of the Delhi Farming and Construction Pvt. Limited dated 24.3.88, it was confirmed by the auditors that the company has given a loan of Rs.5,00,000/- to M/s. L. N. Gadodia and Son Pvt. Ltd.

6. Learned Single Judge in Paragraph 21 of the impugned judgment has specifically noted the fact that the corporate office was shifted after the inspection and the two common employees also resigned from one company only after the inspection.

7. In Andhra University Vs. Regional Provident Fund Commissioner of Andhra Pradesh and Others, it was held by the Supreme Court that the Employees' Provident Fund and Miscellaneous Provisions Act is a beneficent piece of social welfare legislation aimed at promoting and securing the well being of the employees and the Court will not adopt a narrow interpretation which will have the effect of defeating the very object and purpose of the Act. In the said decision it was held that where the Department of Publications and Press of the University was running a printing press where the work of printing of text books, journals and magazines for the various constituent and affiliated colleges as well as of various items of stationery such as admission form etc. was carried out and about 100 persons were employed in connection with the said activity in the said Department, the establishment, namely, the Department of Publications and Press could be said to be a factory as such activities clearly constitute manufacture within the meaning of the said expression and it was held that since more than 20 persons were employed in concerned establishment, the establishment would be liable to be covered under Act. In this connection the decisions of Supreme Court in Noor Niwas Nursery Public School Vs. Regional Provident Fund Commr. and Others, and also in Regional Provident Fund Commissioner, Jaipur Vs. Naraini Udyog and Others, are to be taken notice of. In the case of Noor Niwas Nursery Public School, (supra) in the context of the findings that two units are run by the same society and they are located at one and the same address thereby establishing geographical proximity. Supreme Court came to the conclusion that two units would constitute one single unit. In the case of Regional Provident Fund Commissioner, Jaipur vs. Naraini Udyog and Others (supra) it was held by the Supreme Court that the fact that the two units belonged to the members of the same family and that some of the employees were working for both the units and that the offices of both the units were situated at the same premises and accounts were being maintained by the same set of clerks were relevant factors that were to be taken into consideration. These were the factors which were taken notice of by the Supreme Court for coming to the conclusion that the two units are one establishment for the purpose of the Act. The sum and substance of the aforesaid decisions, therefore,

is that there is a burden on the court to find out and ascertain whether there is any unity of management, supervision and control and also unity of functional integrity and geographical proximity between the two units for the purpose of the Act.

8. It has been repeatedly held by Hon"ble Supreme Court and this court that it is possible to lift the corporate veil when the legal fiction separate legal identity of bodies incorporated under the Companies Act is used to defeat public convenience, justify wrong, protect fraud, or defend crime. In the case of Secretary, H.S.E.B Vs. Suresh and Others etc. etc., It was observed by the Supreme Court that while it is true that the doctrine enunciated in *Salomon v. Salomon and Co. Ltd.* 1897 AC 22 (HL), came to be recognised in the corporate jurisprudence, its applicability in the present context cannot be doubted, since the court invariably has to rise up to the occasion to do justice between the parties in a manner as it deems fit. Roscoe Pound stated that the greatest virtue of the court is flexibility and as and when the situation so demands, the law court ought to administer justice in accordance therewith and as per the need of the situation. Reference could also be made to a decision of the Supreme Court in *Rajasthan Prem Krishan Goods Transport Co. Vs. Regional Provident Fund Commissioner, New Delhi and Others*, wherein it was held by the Supreme Court that the findings recorded by the Regional Provident Fund Commissioner are largely based on facts or based on legitimate inference drawn from the facts and hence, the Regional Provident Fund Commissioner could pierce the veil.

9. The two entities had common directors and the same Managing Director, further the report of the Enforcement Officer which is on record dated 16/09/1999 shows that the Technical Manager and the Commercial Director of the two entities were the same viz.; Mr S.K Shome and Mr. Venkateshwaran, thus, pointing towards unity of employment. The offices of the said companies were located at the same address and had common telephone numbers. The appellant herein has contended that the date of incorporation of the two companies is eleven years apart. This by itself is not sufficient to hold that the two are not interlinked. The observations of the Learned Single Judge, the Regional Provident Fund Commissioner and the Enforcement Officer are clear pointers towards unity of Management, supervision and control that are relevant for the purpose of the provisions of the Provident Fund Act. The said findings are also concurrent findings of fact. It is immaterial that for the purposes of Companies Act, the two companies are two separate legal entities.

10. In the backdrop of the aforesaid factual position and legal principles explained above, it is clearly established that both the companies have common Director and common Managing Director. It is also disclosed from the evidence placed on record that there were common employees. Therefore, we are of the considered opinion that there is unity of management, supervision and control between the two units. Consequently, we hold that it is proved and established that there is inter linking of the two units. There is also functional integrity and,

therefore, the findings recorded by the learned Single Judge are held to be legal and justified. We find no merit in this appeal and the same is dismissed but without any costs.