

(2000) 08 MAD CK 0102

In the Madras High Court

Case No : Writ Petition No. 3797 of 1993

M/s Yennarkay Printers Pvt. Ltd.

APPELLANT

Vs

The Regional Provident Fund Commissioner, Lady Doak
College Road, Chokkikulam, Madurai-625 002

RESPONDENT

Date of Decision : 02-08-2000

Acts Referred:

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

Citation : (2000) 4 CTC 52 : (2000) 3 LW 722

Hon'ble Judges : T. Meenakumari, J

Bench : Single Bench

Advocate : Mr. R. Parthiban, for the Appellant; Mr. P. Narasimhan, for the Respondent

Judgement

T. Meenakumari, J.

1. This writ petition is filed to issue a writ of certiorari calling for the recourses of the respondents in proceedings No.B2/TN/20334/ENF/MDU/93 dated 2.2.1993 quash the same.

2. The case of the petitioner is that he is the managing Director of M/s Yennarkay Printers Private Limited at Sivakasi. In the premises where M/s Yennarkay Printers Private Limited is functioning, a partnership firm known as the M/s Standard Litho Works was functioning and the same was engaged in offset printing with four partners. The said partnership firm was dissolved by a deed of dissolution dated 13.4.1982. Clause 5 and 12 of the deed are as follows:

"Clause 5: The partners hereby mutually agree that pioneer press private Limited is entitled to carry on the business of the undertaking as a successor on dissolution."

"Clause 12: That the partners herein shall be at liberty to carry on the business of their own in the same or similar line or lines as that of the dissolved firm but the partners other than Pioneer Press Private Limited shall not use the name THE

STANDARD LITHO WORKS or any other name closely resembling the same name in their business."

3. Learned Counsel appearing for the petitioner has argued that the abovesaid clauses clearly proves that Pioneer Press Private Limited could carry on the business as a successor of "Standard Litho Works". One of the partners of the said standard Litho Works, one Thilagavathy was allotted a P-24 Double Colour Offset Press among the various machineries owned by the Partnership firm. The present petitioner company was incorporated under the Companies Act on 29.12.1979 and started its operation in March, 1981. Since a part of the premises at No.5-2-I5-E, Sattur Road, Sivakasi was vacant, the petitioner establishes its operation on the Standard Litho Works and after they vacated their premises, the petitioner took on lease a machine from R.Thilagavathy and expanded its operation. Approximately three workers joined in the petitioner's firm and M/s Yennarkay Printers Limited had nothing to do with "Standard Litho Works" and was a totally independent legal entity which started its operations for the first time from March, 1981.

4. Learned Counsel further argued that as per sub-clause 1 to Section 16 of the Employees Provident Fund Act the petitioner is entitled for the infancy protection for the initial period of five years. Section 16(1) of the Act reads as follows:

" 16. Act not to apply to Certain establishments (1) This Act shall not apply a. To any establishments registered under the Co-operative Societies Act, 1912 (2 of 1912), or under any other law for the time being in force in any State relating to Co-operative Societies employing less than fifty persons and working without the aid of Powers; or

b. to any other establishments 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 5 years in the case of the latter, from the date on which the establishment is, or has been, set up.

" Explanation : for the removal of doubts, it is hereby declared that an establishment shall not be deemed to be newly set up merely by reason of a change in its location."

Under the above circumstances, learned counsel appearing for the petitioner has argued that the impugned order passed by the respondents holding that as the petitioner has started his business in the same premises where Standard Litho Works was functioning, the new shop run by members of the same family, there is no justification for infancy protection for the establishment, is without basis. Learned Counsel for the petitioner has further argued that Yennarkay Printers Private Limited is nothing to do with the Standard Litho Works as its legal entity. Hence, the conclusion of the respondents that the petitioner's firm is liable to pay contribution from date of inception of the business has no basis and against the provisions of law. Learned Counsel further argued that merely because three persons of the Standard Litho Works have joined Yennarkay Printers it cannot be

said that the present petitioner is a continuation of dissolved firm. To substantiate his contention learned counsel for the petitioner has relied on a judgment reported in Sri Balaji Enterprise v. Deputy Regional P.F. Commissioner, Madras, 1980 (2) LLJ 380 therein the learned Single Judge has held as follows:-

" To sum up, the test to be applied in such cases is to find out whether on the entire complex of facts of a given case, it can be concluded that the original legal entity, the establishment has come to an end and has been succeeded by a fresh legal entity. If the answer is in the affirmative then that fresh entity will be the entity to which the Act will apply as a first impact and that entity is entitled to infancy protection and that protection will have to be granted as a matter of course. Further, if that entity is an entity which does not come within the meaning of the establishments as defined in the Act in view of the fact that it does not employ 20 or more persons, than that entity will not be covered by the provisions of the Act. On the other hand, if, on the facts of the individual case, it found that the new establishment is not genuinely such but is only an old one formally resuscitated in order to avoid the legal obligation, then it is always open to the Court to hold that it is the old establishments which is substantially continuing and that the liability to contribute must be affixed to the apparently new form also."

5. In the above adjustments it has been held that the original legal entity, the establishment, has come to an end and has been succeeded by a fresh entity. The entity is entitled to infancy protection and that protection will have to be granted as a matter of course.

6. In the case on hand, M/s Yennarkay Printers Limited is a fresh legal entity and the original legal entity is Standard Litho Works and that previous establishment has come to an end. Under the above circumstances, the entity is entitled to infancy protection.

7. Learned Counsel appearing for the respondents has vehemently contended that M/s Yennarkay Printers Limited is the continuation of the old entity with Standard Litho Works which is in the same premises with the same men and machinery and hence, they are not entitled for infancy protection.

8. In view of the judgment cited supra, the petitioner's firm has succeeded the old entity, that is, the Standard Litho Works has come to an end and the petitioner's firm is a fresh legal entity which is entitled for the infancy protection. Following the judgment cited supra, the impugned order is quashed and the writ petition is allowed. No costs. Consequently, WMP.No.6078 of 1993 is closed.