
(2008) 02 DEL CK 0101
In the Delhi High Court
Case No : LPA No. 1166 of 2007

Nath Trader's (India)

APPELLANT

Vs

Regional Provident Fund Commissioner and Others

RESPONDENT

Date of Decision : 26-02-2008

Acts Referred:

Citation : (2008) 101 DRJ 521

Hon'ble Judges : Dr. M.K. Sharma, C.J;Reva Khetrapal, J

Bench : Division Bench

Advocate : S. Balakrishnan and S.N. Jha, for the Appellant; R.C. Chawla, for the Respondent

Final Decision : Dismissed

Judgement

Mukundakam Sharma, C.J.

CM No. 11535/2007, 11537/2007

Having perused the applications and having heard the counsel appearing for the parties, we are satisfied that the appellant has been able to make out sufficient cause for condensation of delay of 51 days in filing the appeal and delay of 141 days in refiling the appeal. Accordingly, delay in filing and refiling the appeal stands condoned. The applications stand disposed of in terms of the aforesaid order.

LPA No. 1166/2007 and CM No. 11536/2007 (stay)

1. We have heard the learned Counsel appearing for the parties on merits.
2. This appeal is directed against the order dated 29th November, 2006 passed by the learned Single Judge allowing the writ petition filed by the respondent herein, which was filed challenging the validity of the order dated 3rd November, 2000 passed by the Employees Provident Fund Appellate Tribunal allowing the appeal of the appellant herein and setting aside the order dated 7th October, 1999 passed by Regional Provident Fund Commissioner u/s 7A of the Employees"

Provident Funds and Miscellaneous Provisions Act, 1952.

3. The issue that arises for our consideration in this appeal is whether "Nath Oil Company" which is a sole proprietorship firm of Mr.Surender Nath dealing in Kerosene Oil and "Nath Traders", which is stated to be partnership firm dealing in LPG have any unity of ownership as also unity of management, supervision and control and whether they could be clubbed for the purpose of applicability of the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

4. The respondent got an inspection carried out in the premises of both Nath Traders and Nath Oil Company, in the year 1989. The squad, who conducted the inspection, submitted a report recommending the applicability of the Act to the aforesaid two entities stating that the said two establishments were in fact one. It was further stated that Nath Traders and Nath Oil Company were operating from the same premises i.e. 14, Kailash Colony, New Delhi - 110 048 and that there was only one entrance to the said premises. It was also revealed that both the establishments had common telephone number being 6432474, as the said number was found on the letterheads of both the firms. In the year 1989, Mr.Surender Nath was the sole proprietor of Nath Oil Company and that he was one of the partners in Nath Traders, which is a partnership firm of Mr.Surender Nath and his father-in-law Mr.O.P. Bhalla and subsequently, on death of Mr.O.P. Bhalla, his wife was inducted as partner and thereafter Ms.Seema Nath, wife of Mr.Surender Nath and daughter of Mr.O.P. Bhalla, became the other partner. Nath Oil Company was dealing in kerosene oil depot whereas Nath Traders was dealing in LPG connection. It was also revealed that the accounts of the two entities were being looked after by one common Accountant Shri R.C. Singh.

5. The Regional Provident Fund Commissioner stated in his order that the combined and cumulative strength of employees of both the establishments was found to be 24 and that period of infancy stood expired long before. He held that the combined employees strength of the two establishments was more than the required strength for applicability of the Act and since there was functional integrity between the two firms, unity of ownership, inter-transfer of employees and geographical proximity and also unity of management, supervision and control, both the aforesaid establishments should be treated as one establishment for the purpose of applicability of the Act.

6. An appeal was filed by the said two establishments and in the said appeal, it was held by the Appellate Tribunal that the two establishments were dealing in two different commodities, one in kerosene oil and the other in LPG and that they were having separate licenses from the respective authorities and Therefore they are two separate legal entities. It was held that M/s Nath Oil Company was the sole proprietorship concern whereas Nath Traders was a partnership firm, both having separate sales tax and income tax registration and their assessments were also done separately. The Tribunal further held that since one is a partnership firm and the other is a proprietorship firm, they cannot be

clubbed together and considered as one establishment. It was held that one of the said establishments could survive without the other being in existence and they were not interdependent and, Therefore, they cannot be clubbed together for the purpose of applicability of the provisions of the Act.

7. Being aggrieved by the said order passed by the Tribunal, the respondent preferred a writ petition in this Court, which was considered by the learned Single Judge and on going through the records and upon hearing the counsel appearing for the parties, it was held that Mr.Surender Nath was running business of distribution of LPG and kerosene oil, both of which are fuels although he opened two firms for the two agencies and obtained separate licenses in the name of two firms. Findings were also recorded by the learned Single Judge on appreciation of evidence on record that Mr.Surender Nath could have obtained the licenses in the same name for both the establishments but only in order to deprive the employees of the benefits of beneficial legislations and labour laws, he fragmented his business into two firms. As a matter of fact, it was held by the learned Single Judge by order dated 29th November, 2006 that the management and control and supervision of both the entities remained in the hands of Mr.Surender Nath and also that there was a common Accountant operating from the same premises at the time of inspection. It was also held that the employees of both the establishments were intermingled and that both the establishments were using the same telephone number and had given the same number on their letterheads and, Therefore, it is established that the two firms were, in fact, one establishment, working under one management and control of Mr.Surender Nath. It was also held that the other partner was his wife and, Therefore, there was a functional integrity. Merely because they have separate sales tax and income tax registration, it was held, would not change the unity of the establishment.

8. Having recorded those findings and after making the reference to the decision of the Supreme Court in *Management of Wenger and Co. Vs. Their Workmen*, and *Rajasthan Prem Krishan Goods Transport v. R.P.F. Commissioner* 1997 Lab(IC) 146, it was held that the employees of the two firms were rightly clubbed together for the purpose of applicability of the provisions of the Act.

9. The facts, Therefore, on the basis of which decision was rendered by the various authorities, namely, the Regional Provident Fund Commissioner, the Appellate Tribunal and the learned Single Judge in the writ petition clearly pin point certain accepted positions of fact that there were two entities, namely, Nath Oil Company and Nath Traders dealing in two separate commodities, namely, kerosene oil and LPG. They are also separately assessed both for the sales tax and the income tax purposes. But apart from the said distinctive features, there are much commonality between the two establishments, which are already stated hereinbefore.

10. The Regional Provident Fund Commissioner recorded the evidence wherein Mr.Surender Nath, the proprietor of the proprietorship firm examined himself. The statement made by Mr.Surender Nath also discloses that he was proprietor

of M/s Nath Oil Company and a partner in Nath Traders (India) and that M/s Nath Traders (India) deals in Indane Gas and M/s Nath Oil Company deals in kerosene oil. The statement of Mr.Surender Nath further discloses that M/s Nath Traders (India) was started on 1st November, 1965 with two partners, Mr.O.P. Bhalla and Mr.Surender Nath and that on the death of Mr.O.P. Bhalla, his daughter Mrs.Seema Nath, wife of Mr.Surender Nath, became the partner. Mr.Surender Nath admitted in his cross examination that address of both the establishments was same and he also admitted that Mr.R.C. Singh was the common Accountant of both the establishments. It is also established that there is geographical proximity and both the establishments are operating from the same premises i.e. 14, Kailash Colony, New Delhi and that there was common entrance to the premises. The aforesaid position, Therefore, does indicate that there was no distinct or discerning demarcation which could in any way distinguish that there were two different establishments at the same address. It was also established by evidence that the employees in both the establishments were intermingled and a common telephone number was mentioned on the letterheads of both the companies. It is also brought in evidence that Mr.Surender Nath is overall in charge for both the establishments.

11. 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 the concerned establishment, the establishment would be liable to be covered under Act.

12. In this connection the decisions of Supreme Court in *Noor Niwas Nursery Public School Vs. Regional Provident Fund Commr. and Others*, and in *Regional Provident Fund Commissioner, Jaipur Vs. Naraini Udyog and Others*, are also 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, the Supreme Court came to the conclusion that the two units would constitute one single unit. In the case of *Regional Provident Fund Commissioner, Jaipur v. Naraini Udyog and Ors.* (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.

13. In the backdrop of the aforesaid legal position, when we consider the facts of the present case, it is clearly established that both the units have common management. There is common Accountant operating from the same premises. The employees of both the establishments are intermingled and that both the establishments are using the same telephone number and have given the same number on their letterheads and, Therefore, it is established that the two firms are, in fact, one establishment, working under one management and control of Mr.Surender Nath. The other partner is his wife and, Therefore, there is a functional integrity. Merely because they have separate sales tax and income tax registration will not change the unity of the establishment.

14. Therefore, we are of the considered opinion that there is unity of management, supervision and control between the two units. It is also proved on record and established that there is interlinking of and functional integrity between the two units and, Therefore, the findings recorded by the learned Single Judge do not need any interference in our hands. We find no merit in this appeal and the same is dismissed, but without any costs.