
(1969) 02 KAR CK 0007
In the Karnataka High Court
Case No : Writ Petition No. 1863 of 1966

Palanimalal (S.V.)

APPELLANT

Vs

Regional Provident Fund Commissioner and Another

RESPONDENT

Date of Decision : 13-02-1969

Acts Referred:

Employees Provident Fund and Miscellaneous Provisions Act, 1952 — Section 16

Citation : (1970) 1 LLJ 536 : (1969) 2 MysLJ 392

Hon'ble Judges : Ahmed Ali Khan, J;A.R. Somnath Ayyar, J

Bench : Division Bench

Judgement

Somnath Ayyar, J.—Palanimalai who was described in a notice which was issued to him by the Regional Provident Fund Commissioner functioning under the Employees' Provident Funds Act, 1952, as the proprietor of a business carried on under the name and style, Madurai Perfume Paradise, is the petitioner before us. He was called upon by the Commissioner to produce returns under the Act and on his failure to do so, he was intimated by a communication issued to his advocate on 13 September, 1966, that the arrears of contribution payable by him under the provisions of the Act would be recovered by the revenue authorities as if they were arrears of land revenue. In this writ petition, the petitioner asks us for a mandamus directing the concerned authorities to refrain from recovering any amounts for the payment of which there was a demand.

2. The main contention urged on behalf of the petitioner by his learned counsel, Sri Vedanta Ayyangar, is that the provisions of the Act were inapplicable to his establishment and he depended on S. 16 of the Act. That section reads;

"16. Act not to apply to certain establishments. - (1) This Act shall not apply -

(a) to any establishment registered under the Co-operative Societies Act, 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 power; or

(b) to any other establishment 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 five years in the case of the latter, from the date on which the establishment is, or has been set up."

3. The case for the petitioner is that the establishment with which we are concerned in this writ petition was set up only in 29 April 1963 and that since the number of persons employed in the establishment is less than fifty but more than twenty, the provisions of the Act are not applicable to that establishment until after the expiry of a period of five years from the date on which the establishment was set up.

4. The allegation in the affidavit of the petitioner that an establishment was for the first time set up by him only on 29 April 1963 is not admitted in the counter-affidavit of which the Provident Funds Inspector is the deponent. The assertion made in the counter-affidavit is that the establishment of the petitioner is an old establishment which had been set up quite a long time ago and that with respect to that establishment there was a fragmentation into more parts than one in consequence of an arrangement between the members of the family who were carrying on the business and that it is one fragment of that business which the petitioner's establishment is now carrying on.

5. It is common ground that the business carried on by the petitioner in his establishment pertains to an activity relating to the manufacture and sale of agarbattis. It is also not disputed that that kind of business activity was also the activity of the members of the family to which the petitioner belonged even when they were in Rangoon before they trekked back to his country in the year 1942 when the Japanese overran Burma. It is asserted on behalf of the Commissioner that when the family came back to this country in that way, that family which consisted of the petitioner and his two brothers carried on the same business in this country and it transpires that Murugesh, who was the eldest brother, discontinued his association with that business in the year 1956.

6. From the material on record it appears that after Murugesh Walked out of the business in that way the remaining two brothers, namely, the petitioner and Rangaswami, along with their father, Valaganapathi Nadar, commenced another business in codubattis and the uncontroverted allegation in the petitioner's affidavit is that the partnership which so came into being between those three persons came to an end on 13 April, 1963, when it was wound up and dissolved.

7. The petitioner proceeded to state in his affidavit that on 29 April, 1963, the establishment with which we are concerned in this case and which is described as the Madurai Perfume Paradise was set up and that that establishment is an entirely new establishment between which and the old establishment there was no nexus or association. It is stated in the affidavit that the new establishment is a partnership firm of which the petitioner, Palanimalai, and his three adult sons were partners. It is also stated that the minor children of Palanimalai were also

admitted to the benefits of partnership.

8. On behalf of the Commissioner it is maintained that the Madurai Perfume Paradise is a continuation of the old business which was carried on by Palanimalai and his two brothers along with their father and that the mere fact that that business was wound up on 13 April 1963, does not support the assertion made on behalf of the petitioner that Madurai Perfume Paradise was a new establishment founded only for the first time on 29 April, 1963.

9. Dependence was placed in support of this submission on the pronouncement of the High Court of Bombay in *Standard Silk Mills, Surat v. Regional Provident Fund Commissioner, Bombay* [Special Civil Appeal No. 829 of 1956] in which the elucidation made was that where a factory was split up into five units and such splitting was a mere subterfuge to overcome the provisions of the Provident Funds Act, the five units into which the factory was split up could not be regarded as new establishments set up for the first time.

10. The question whether an establishment is new or whether it is part of an old establishment is one which should be decided on the facts and circumstances in each case. While it is indisputable that if a plurality of establishments come into being when an old establishment ceases to continue and the bifurcation of the same establishment into more than one component unit has for its object the evasion of the provisions of the Act, such separation of one establishment into different component units which has for its purpose the circumvention of the provisions of the Act cannot assist an argument that the new units are new establishments.

11. But in the case before us the assertion in the petitioner's affidavit that the partnership of which the petitioner and his two brothers along with their father were partners was wound up on 13 April, 1963 and that intimation of such dissolution was given to all the concerned authorities such as the Income Tax authorities, sales tax authorities and the Registrar of Firms remains uncontroverted in the counter-affidavit produced on behalf of the Commissioner in which there is no allegation that the dissolution of the old partnership was a mere artifice for the circumvention of the provisions of the Act. In the absence of any such denunciation of the dissolution, the dissolution must be presumed to be a good dissolution which had for its object the termination of the business which was being carried on in partnership. If a dissolution of partnership firm takes place in that way, the establishment pertaining to that partnership firm comes to an end and no longer continues and if an old partner of the firm enters into a partnership with others and carries on a business activity similar to that carried on by the dissolved firm, it is not possible to assert that the establishment pertaining to the new partnership is no other than the establishment of the dissolved partnership. In the absence of materials justifying the view that the establishment of the new partnership was the same old establishment of the old partnership though masquerading under a new name, it could not be asserted on behalf of the Commissioner on the mere foundation of the similarity of the

business carried on by the two partnerships that no new establishment has come into being. As explained by this Court in *Sundara Rao (B.) Vs. Regional Provident Fund Commissioner, Bangalore*, , the test is whether there was an existing establishment the operations of which were continued by an establishment which came into being subsequently. If they were so continued, there is no new establishment. If not, the establishment must be regarded as having been set up only from the date it began to function. The respondent cannot derive much support from the fact that Rangaswami who started another concern under the name and style, Madras Perfume Paradise, submitted himself to the provisions of the Act. There may be many explanations for that conduct of Rangaswami and the fact that Rangaswami either for good reasons or even without them considered his establishment to be one to which the provisions of the Act were applicable, does not necessarily mean that the petitioner also should similarly submit to the provisions of the Act even if they did not apply to the establishment founded by him on 29 April, 1963.

12. The purpose of S. 16 is that a new establishment must be allowed sufficient time to acquire stability to be able to afford the contribution which the provisions of the Act require that establishment to contribute towards the Employee's Provident Funds Scheme and if the petitioner's establishment came into existence only on 29 April, 1963 the petitioner is entitled to contend that the provisions of the Act could be made applicable only after the period specified in S. 16 expires.

13. On the facts and circumstances which we have explained in the course of this judgment we reach the conclusion that the petitioner's establishment was a new establishment which was set up only on 29 April, 1963 since there are no reasons for reaching a contrary conclusion in the case before us. So we allow this writ petition and quash the impugned demands.

14. Nothing that we have said in this judgment will preclude the application of the provisions of the Act and the scheme to the petitioner's establishment after the expiry of the period of five years to which S. 16 refers.

15. No costs.