
(1993) 07 RAJ CK 0014
In the Rajasthan High Court
Case No : .C.S.A.W. No. 123 of 1990

Periwal Trading Corpn.

APPELLANT

Vs

Regional P.F. Commissioner

RESPONDENT

Date of Decision : 07-07-1993

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 7A

Citation : (1996) 1 LLJ 415 : (1993) 2 RLW 480

Hon'ble Judges : N.C. Kochhar, J;M.R. Calla, J

Bench : Division Bench

Advocate : Narendra Jain, in Appeal Nos. 120 and 121/90, N.L. Jain and Subhash Jain, in Appeal Nos. 122 and 123/90, for the Appellant; Narendra Jain, in appeal Nos. 122 and 123/90; N.L. Jain and Subhash Jain for respondent in appeal Nos. 120/90 and 121/90, for the Respondent

Final Decision : Allowed

Judgement

Kochhar, J.—All these four appeals, u/s 18 of the Rajasthan High Court Ordinance 1949, arise out of the common order dated March. 29, 1990 passed by a learned Single Judge of this Court. The brief facts giving rise to these appeals are as under :-

2. M/s Modern Steels is a firm with Shri Krishna Kumar Lohia son of Shri Narendra Kumar Lohia as "Karta" of Krishna Kumar Saurav Kumar H.U.F. and his sister Smt. Rama Goyal wife of Shri Kailash Nath Goyal as partners. This firm has established a factory at Kota in which cold rolling of steel is done. The factory came within the purview of the Employees Provident Fund & Misc. Provisions Act, 1952 the Act) w.e.f. August 18, 1982 as it had fulfilled the conditions of applicability envisaged under Clause (a) of Sub-section (3) of Section 1 of the Act. It was allotted Code No. RJ/3346 and it started depositing the provident fund dues w.e.f. September 1982.

3. M/s Narayani Udhyog is a firm with Shri Narendra Kumar Lohia as "karta" of Narendra Kumar Krishna Kumar H.U.F. Smt. Manju Devi Lohia wife of Shri

Krishna Kumar Lohia, and Shri Krishna Kumar Bagaria son of Shri Ma-navir Prasad Bagaria as "karta" of Krishna Kumar Bagaria & Sons (HUF), as its partners. This firm has established a factory at Kota at a distance of 3 kilometers from the factory of Modern Steels. In the factory of Narayani Udhog hot rolling of steel is done. This factory was provisionally covered under the Act, w.e.f. April 30, 1983 and, on receipt of a report from the Provident Fund Inspector, the Regional Provident Fund Commissioner, Jaipur (the Commissioner) issued a notice to M/s Modern Steels directing it to show cause why it should not be clubbed along with M/s Narayani Udhog and be covered under the Act w.e.f. May 1, 1980. Vide reply dated September 8, 1983, M/s Modern Steels contended that it was different from M/s Narayani Udhog and both of them could not be clubbed together. The Commissioner held enquiry u/s 7-A of the Act and vide the impugned order dated August 8, 1988 held that M/s Modern Steels and M/s Naryanai Udhog constituted one establishment for the purpose of the Act and were liable to be covered thereunder w.e.f. June 1, 1980. The Commissioner assessed a sum of Rs. 85,499/- as the amount of provident fund and administrative charges payable by M/s Modern Steels for the period from June, 1980 to August, 1982 and a sum of Rs. 1, 10,243/- payable in that account by M/s Narayani Udhog for the period for June, 1980 to April 1983 and directed that if the amount was not deposited within 15 days of the receipt of the order by M/s Modern Steels the same be recovered as arrears of land revenue as provided in Section 8 of the Act. A copy of the said order was sent to M/s Modern Steels under letter dated August 11, 1988 (Annx.I) with a direction to report compliance within the time specified in the order. The above said order passed by the Commissioner was challenged by M/s Modern Steels as also by M/s Narayani Udhog by filing writ petitions which were registered as Nos. 194/89 and 195/89 respectively. It was pleaded by the two firms that they could not be clubbed together as one establishment for the purpose of the Act. M/s Narayani Udhog further contended that no notice had been issued to it before the impugned order was passed by the Commissioner.

4. M/s Rajasthan Central Stores Pvt. Ltd. (hereinafter to be referred as the company) was incorporated as a Private Limited Company in the year 1949 under the Companies Act, 1913 and Shri B.P. Periwal and Shri G. P. Periwal are its two Directors. The company has been engaged in the business of sale and service of Godrej products in the rented premises situated at Mirza Ismail Raod, Jaipur. The company wrote to the Commissioner for being covered under Sub-section (4) of Section 1 of the Act and the Commissioner acceded to the request, without prejudice to it being covered under Sub-section (3) of Section 1 of the Act, if it was so found and, consequently, the company started depositing the provident fund dues w.e.f. November, 1982, On receipt of a report from the Provident Fund Inspector it was found that the company had employed 20 persons on January 16, 1982 and, #s such, was directed to provisionally pay the provident fund dues with effect from the said date pending verification of the record and the company complied with the said order.

(5). M/s Periwal Trading Corporation (hereinafter to be referred to as the firm) is a firm with Shri Rurendra Periwal son of Shri B.P. Periwal, Shri Hari Shankar son of Shri G. P. Periwal, Smt. Shakuntala Devi wife of Shri B.P. Periwal and Smt. Savitri Devi wife of Shri G.P. Periwal as its four partners. This firm carries on the business of distribution of Usha Water Coolers and Electronic Accessories besides service and repair work of the Godrej products sold by the company. Vide letter dated March 19, 1983 the firm requested the Commissioner for its voluntary coverage under Sub-section 4 of Section 1 of the Act w.e.f. April 1, 1983 stating that it had never employed more than 19 persons to come under the provisions of the Act otherwise, the Commissioner acceded to the request of the firm and allotted it Code No. RJ/3490 and the firm started depositing the provident fund dues from April 1983. The Commissioner received a report from the Provident Fund Inspector to the effect that both the company and the firm were part and parcel of the same establishment and that the total number of persons employed by the said combined establishment was 21 as on April 30, 1976 and, as such, on that date that condition for coverage under Clause (b) of Sub-section (3) of Section 1 of the Act had been fulfilled. After issuing notice, the Commissioner conducted an enquiry u/s 7-A of the Act and, vide the impugned order dated August 18, 1988, held that the company as well as the firm were the family concerns of Shri B.P. Periwal and Shri G.P. Periwal. the two Directors of the company and were one establishment for the purpose of the Act. He further held that a sum of Rs. 77,915/- was payable by the company as provident fund dues and administrative charges for the period from May, 1976 to January, 1982 and a sum of Rs. 59,858/- was payable in the same account by the firm for the period from May, 1976 to March, 1983 and directed that if the amounts were not deposited within 15 days of the receipt of the order the same be recovered as arrears of land revenue. The copies of the order were sent to the company as well as to the firm vide letter dated August 20, 1988, (Annr.-1) with a direction to report compliance within the period specified in the order. The company as well as the firm challenged the impugned order dated August 18, 1988 by filing writ petitions No. 697/89 and 342/89 respectively, on the grounds that they were separate establishments independent of each other and had no functional: integrality and further that the establishment owned by the company could not be clubbed with the establishment owned by the firm.

6. All the four writ petitions were contested by the Commissioner. After hearing the learned counsel for the parties, vide the impugned order dated March 29, 1990, a learned Single Judge of this Court has dismissed the writ petitions filed by the company and the firm by observing that there was no reason to interfere in the view taken by the Commissioner but has allowed the writ petitions filed by M/s Modern Steels and M/s Narayani Udhyog and has quashed the impugned order dated August 8, 1988 and the notice demanding the dues from the said two firms. In these circumstances, these four special appeals have been filed u/s 18 of the Rajasthan High Court Ordinance, 1949, the former two appeals by the Commissioner and the latter two appeals by the company and the firm

respectively.

7. Before dealing with the questions involved in these appeals, it is necessary to refer to the relevant provisions of the Act. The Act, as its preamble shows, is to provide for the institution of provident fund for employees in factories and other establishments. Sub-section (3) of Section 1 of the Act provides for the applicability of the Act to the establishment mentioned therein and Sub-section (4) provides for the coverage of any establishment on request being received even if the provisions of the Act are otherwise not applicable to such an establishment. Section 2 defines various expressions and Section 2-A makes it clear 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. Section 5 deals with the framing of Employees' Provident Fund Scheme and for setting up a Fund there under. Section 6 deals with the contribution to be paid to the fund by the employer and the employees. Sections 6-A and 6-C deal with the framing of Employees' Family Pension Scheme and Employees' Deposit Linked Insurance Scheme respectively for setting up funds thereunder and in regard to the payments to be made therein. Section 7-A empowers the officers concerned to decide the disputes, if any, regarding the applicability of the Act to an establishment and to determine the amount due from any employer under any provision of the Act and Section 8 deals with the manner of recovery of the amount due from the employer. Section 16 mentions the infancy period i.e., the period during which the provisions of the Act would not apply to an establishment from the date that it is set-up. The scheme of the Act shows that for its applicability, the unit to be considered is "the establishment", including its departments and branches, as they are considered to be the parts of "the establishment", and further that the employer of "the establishment" will have to contribute to the provident fund and other funds, created under the Act. An entrepreneur; whether an individual proprietor, or a partnership firm, or an incorporated company; may be engaged in various business activities and may set up several units in the form of establishment, and question often arises as to whether such units/establishments form parts of each other for the purposes of the Act or not and such questions have been considered by the Apex Court as also by this Court and other High Courts, and various tests have been applied for deciding such questions, and some of the decisions have been noted in the impugned orders of the Commissioner as well as of the learned Single Judge. It, however, is not disputed that unless the two establishments have one and the same employer, they cannot be considered as a department or branch of each other. In other words, in the absence of a common employer, no test can be applied to consider whether any two establishments are parts of each other or not. The Commissioner appears, to have been conscious of this position, but while clubbing the establishment of M/s Modern Steels with that of M/s Narayani Udhyog, and the establishment of the company with that of the firm, has held that M/s Modern Steels and M/s Narayani Udhyog were owned by the members

of the same family, headed by Narendra Kumar Lohia as head of the HUF. and that the company as well as the firm were the family concerns of B.P.Periwal and G.P.Periwal, the two Directors of the company.

8. The establishments of the two firms are the factories set up in their names "M/s Modern Steels" and "M/s Narayani Udhog". No evidence has been brought to our notice to show that the factories concerned are not owned by the firm concerned, but are in fact, owned by the HUF headed by Narendra Kumar Lohia. It therefore, cannot be disputed that the firm concerned is the owner of the factory concerned and is the employer of the employees employed therein. Although the partners of these two firms, owning the establishments concerned, may be interested in each other; being closely related; the two establishments cannot be said to have a common employer and, therefore, the establishment of one firm cannot be considered to be the department or branch of the establishment of the other firms and, as much, its part.

9. It is now well-settled that a company incorporated under the companies Act, is a legal person distinct from its members, and the property acquired by the company vests in it and not in its members. If any authority is needed for this purpose, reference may be made to the cases: Salomon v. Salomon & Company Limited 1907 AC 22 and Bacha F. Guzdar Vs. Commissioner of Income Tax, Bombay, This position has been recognised by Section 34 of the Companies Act, 1956, which corresponds to Section 23 of the India Companies Act, 1913. It is also not disputed before us that the Directors of the company cannot be said to be the proprietors thereof, but are its agents, and the property of the company cannot be said to be the property of its Directors. It is thus clear that B.P. Periwal and G.P.Periwal cannot be said to be the employers of the employees employed in the establishment of the company. The firm, admittedly, has four partners, who , though closely related to the two Directors of the company, are separate individuals, and no evidence has been brought to our notice to show that establishment, set up by the firm, is not in fact, owned by it. It therefore, has to be held that the firm is the owner of its establishment and is the employer of the employees employed therein, and not the two said Directors, of the company. In these circumstances, the establishments owned by the company and the one owned by the firm cannot be said to have a common employer, and neither of the two establishment can be considered to be the department or branch or part of the other.

10. The impugned orders dated August 8, 1988 and August 18, 1988 passed by the Commissioner, which are the subject-matter of these four appeals, are, therefore, not legal and cannot be upheld, and the appeals can be decided on this ground itself.

11. In this view of the matter, the other contentions raised at the Bar, supporting or assailing the impugned order passed by the learned Single Judge, need not be dealt with.

12. For the above said reasons, DB Civil Special Appeal (Writ) Nos. 120/90 and 121/90 styled as "Regional Provident Fund Commissioner, Jaipur v. M/s Narayani Udhyog, Kola: and "Regional Provident Fund Commissioner, Jaipur v. M/s Modern Steels, Kola, ; respectively, fail and are dismissed, but, other two DB civil Special Appeals (Writ) Nos. 122/90 and 123/90, styled as, "M/s Rajasthan Central Stores Private Limited, Jaipur v. Regional Provident Fund Commissioner, Jaipur"- and "M/s. Periwai trading Corporation, Jaipur v. Regional Provident Fund Commissioner, Jaipur, respectively, are allowed, the impugned orders passed by the learned Single Judge as also by the Commissioner, in their cases, are set aside, and the notice of demand dated August 20, 1988 (Annexure-P/1) is quashed. The four appeals are decided accordingly, leaving the parties to bear their own costs.