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**(2000) 07 PAT CK 0071**  
**In the Patna High Court**  
**Case No : C.W.J.C. No. 3358 of 1992 (R)**

P.K. Press Metal (P) Ltd.

APPELLANT

Vs

Regional Provident Fund Commissioner and Others

RESPONDENT

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**Date of Decision :** 31-07-2000

**Acts Referred:**

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

**Citation :** (2001) 1 LLJ 542 : (2000) 4 PLJR 754

**Hon'ble Judges :** M.Y. Eqbal, J

**Bench :** Single Bench

**Advocate :** D. Jerath, K. Bahadur and S.N. Prasad, for the Appellant; A.K. Jha and Shuba Jha, for the Respondent

**Final Decision :** Dismissed

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## Judgement

M.Y. Eqbal, J.—In this writ application the petitioner has prayed for quashing the order dated July 20, 1992 passed by respondent No. 1, the Regional Provident Fund Commissioner, Jamshedpur whereby he has held that the establishment of the petitioner is not entitled to get exemption u/s 16(1)(d) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the said Act). The respondent No. 1 further held that the establishment of the petitioner is not a new establishment rather the old establishment in the name and style of Friends Press Metal (P) Ltd. continued in the shape of new establishment of the petitioner.

2. The petitioner's case is that it is a private company registered under the Companies Act and its shares have been subscribed by a few persons. There existed an establishment namely, Friends Press Metal (P) Ltd., Chhota Govindpur, Jamshedpur. In the same premises there was another establishment in the name of S. K. Tools and Dyes (P) Ltd. The two units ceased to function from May, 1997 as they suffered serious financial loss and were fully closed. It is stated that since Friends Press Metal (P) Ltd. was under the liability of the Bihar State Financial Corporation and on account of non-payment of dues, the State Financial

Corporation took over the mortgaged loan and properties and put them on auction sale by notice published in the daily newspaper Ranchi Express dated February 17, 1988. The petitioner's further case is that it participated in the auction sale and being the successful bidder purchased the mortgaged assets of Friends Press Metal (P) Ltd. (hereinafter referred to as the old Establishment). After purchase it was on October 19, 1989 the assets of the establishment were handed over by the Corporation to the petitioner and it came into production on March 23, 1990. It appears that on the basis of enquiry report submitted by the respondent No. 2, the Enforcement Officer, Employees' Provident Fund, Jamshedpur, the respondent No. 1 issued notices u/s 7A of the said Act. On receipt of the notice the petitioner filed a petition claiming exemption u/s 16(1) (d) of the said Act on the assertion that the petitioner had purchased the closed establishment of Friends Press Metal (P) Ltd. at auction sale held by Bihar State Financial Corporation and the new establishment commenced production from March 23, 1990. The respondent No. 1 however, passed the impugned order holding that the petitioner is not entitled to get exemption under the aforesaid provisions of the Act.

3. A counter-affidavit has been filed on behalf of respondent Nos. 1 and 2 stating, inter alia, that although the petitioner purchased the establishment in an auction sale but the establishment remained the same and only management was changed. It is stated that change of name does not affect the applicability of the establishment nor the change of ownership. The respondents' further case is that as and when the Corporation took over the closed establishment all liabilities shifted to them and it was their obligatory duty to clear the arrears dues of the provident fund as prescribed u/s 17B of the said Act. It is stated that old establishment and the liability of clearing the past dues lies on the present management.

4. Mr. Dilip Jerath, learned counsel appearing for the petitioner, assailed the impugned order as being illegal and wholly without jurisdiction. Learned counsel submitted that the establishment of the petitioner have nothing to do with the old establishment and while considering the question of continuity or discontinuity the authority ought to have considered the question of ownership of the management, the staff, the name of the business and the location. Learned counsel submitted that the new establishment of the petitioner in no way could be saddled with any of the liability of the old establishment which was finally closed and went out of existence inasmuch as the Corporation took over the management and controlled the possession and put the closed establishment to auction sale with which all liabilities, if any, were completely wiped out and the auction sale in favour of the petitioner was free from all sorts of liabilities. Learned counsel further submitted that Section 17B of the said Act is not at all applicable in view of the admitted fact that in the instant case there is no voluntary transfer of the establishment rather it was a transfer by virtue of auction sale. In this connection, learned counsel relied upon decisions in the case of Sri Angappa Spinning Mills and Others Vs. Regional Commissioner, Employees

Provident Fund Tamilnadu and Pondicherry, and in the case of P.G. Textile Mills (Pvt.) Limited, Baroda Vs. Union of India and Others, .

5. On the other hand, Mr. A.K. Jha learned Additional Standing Counsel, Central Government firstly submitted that the Bihar State Financial Corporation, with a view to run the establishment as well as to recover the loan transferred the unit by auction sale in favour of the petitioner. Thus establishment remained the same, but the management was changed. Learned counsel submitted that the impugned order was passed by the authority after giving full opportunity of hearing to the petitioner and therefore there is no illegality in the order. Learned counsel in support of his contention relied upon the decision of the Supreme Court in the case of Sayaji Mills Ltd. Vs. Regional Provident Fund Commissioner, .

6. The admitted facts are that the unit was earlier held and possessed by Friends Press Metal (P) Ltd. which was financed by Bihar State Financial Corporation. When the erstwhile owner defaulted in payment of loan the unit was advertised and auction sold in favour of the petitioner and the entire assets were handed over to the petitioner in October, 1989. Petitioner's own case is that the said unit came into production from March 23, 1990. It is not the case of the petitioner that before the establishment was auction sold all the employees under the erstwhile owner were retrenched from service and the unit was restarted by engaging or employing new employees and staff and by purchasing new machineries or installing new plants. The respondent authority therefore in the order rightly came to the conclusion that petitioner is not entitled to get benefit of Section 16(1)(d) of the Act.

7. Having regard to the facts of the case, I am of the opinion that the instant case is fully covered by the decision of the Apex Court in the case of Sayaji Mills Ltd. v. Regional Provident Fund Commissioner (supra). In that case before the Supreme Court the appellants had purchased the Hirji Mills Ltd. in the Court's sale held by the Official Liquidator. The appellant discharged the workmen of the Hirji Mills but re-employed 70% of those workmen on fresh contracts. The appellant claimed to have invested some fresh capital in the business renovated the machinery and started factory. Apart from the business of manufacturer and sale of textile goods carried on by the Hirji Mills, the appellant also claimed to have commenced to produce new types of goods at the factory after obtaining a new licence to run it. The question that came for consideration before the Apex Court was whether the appellant was entitled to exemption u/s 16(1)(d) of the said Act.

Answering in the negative and dismissing the appeal the Supreme Court held that:

"The Employees" Provident Fund Act being the beneficent statute which should be construed so as to advance the object with which it is passed. Any construction which would facilitate evasion of the provisions of the Act and should as far as possible be avoided."

Their Lordship further observed (in 1985-I-LLJ-238 at 240,241:

"The Act being a beneficent statute and Section 16 of the Act being a clause granting exemption to the employer from the liability to make contributions, Section 16 should receive a strict construction. If a period of three years has elapsed from the date of the establishment of a factory, the Act would become applicable provided other conditions are satisfied. The criterion for earning exemption u/s 16(1)(d) of the Act is that a period of three years has not yet elapsed from the date of the establishment of the factory in question. It has no reference to the date on which the employer who is liable to make contributions acquired title to the factory. The Act also does not state that any kind of stoppage in the working of the factory would give rise to a fresh period of exemption. The work in a factory which is once established may be interrupted on account of factory holidays, strikes, lockouts, temporary breakdown of machinery, periodical repairs to be effected to the machinery in the factory, non-availability of raw materials, paucity of finance etc. It may also be interrupted on account of an order of Court like the one we are confronted with in this case. Interruptions in the running of factory which is governed by the Act brought about by any of the reasons mentioned above without more cannot be construed as resulting in the factory ceasing to be a factory governed by the Act and on its restarting it cannot be said that a new factory is or has been established. On the resumption of the manufacturing work in the factory, it would continue to be governed by the Act. In Chagganlal Textile Mills Pvt. Ltd. v. P.A. Bhaskar on the file of the Bombay High Court which is one of the earliest decisions delivered on the above question (which is unreported), Justice TENDOLKAR observed thus:

"The important point to notice about this provision is that the Act is made applicable to factories and not to the owners thereof; or in other words, it applies to factories irrespective of who the owners from time to time may be."

8. Mr. Dilip Jerath put heavy reliance on the decision of the Madras High Court in the case of Sri Angappa Spinning Mills v. Regional Commissioner E.P.F. (supra). The Madras High Court has taken a view that Section 17B of the Act cannot be applied to fasten liability on the purchaser, in Court sale for the contribution and other charges which had remained unpaid in respect of period long before the transferee becoming the employer. With due respect this decision cannot be relied upon in view of the ratio decided by the Apex Court in Sayaji Mill's case (supra).

9. Similarly, in the case of P.G. Textiles Mills v. Union of India, (supra) the old company business was completely wound up and closed and thereafter there had been Court sale of all the assets of the old company. In that context the Gujarat High Court held that there could never be continuity of the liability to the new employer. This decision also therefore will be of no help to the petitioner.

10. Having regard to the facts and circumstances of the instant case and the law discussed hereinabove, I am therefore of the view that petitioner cannot

exonerate himself from the liability under the said Act and further that the petitioner is not entitled to get benefit of Section 16(1)(d) of the Act. I do not find any illegality in the order passed by the authority.

11. For the reasons aforesaid there is no merit in this application, which is accordingly dismissed.