
(2006) 04 MP CK 0103

In the Madhya Pradesh High Court

Case No : Writ Petition No. 141 of 1997

Raj Kumar Oil Mills Pvt. Ltd. and Another	APPELLANT
Vs	
Regional Provident Fund Commissioner and Others	RESPONDENT

Date of Decision : 18-04-2006

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 1(5), 16, 16(1)

Citation : (2006) ILR (MP) 707

Hon'ble Judges : Arun Mishra, J

Bench : Single Bench

Advocate : M.L. Jaiswal and Vandana Shrivastava, for the Appellant; S.C. Sharma and Harshit Patel, for the Respondent

Final Decision : Dismissed

Judgement

Arun Mishra, J.—This writ petition has been preferred by the petitioners assailing order (P-10), dated 2-1-1995, order (P-12), dated 21-6-1996 and order (P-16), dated 26-9-96. Prayer has also been made to restrain the respondents from demanding & recovering the amount towards the provident fund as against the petitioner Mill.

2. It is averred in the petition that petitioner is a Private Ltd. Company registered under the Companies Act. It was carrying on the business of expelling oil from oil seeds at Damoh, District Damoh. Petitioner had acquired a running oil mill situated in Damoh town sometimes in the year 1955 by a registered deed of sale, thereafter Private Ltd. Company was got registered in the name & style of M/s. Rajkumar Oil Mills Private Ltd. as apparent from certificate of Incorporation (P-I). On coming into force of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as "the Act of 1952"); it was made applicable to the petitioners as total number of employees were more than 20, they started deducting the provided fund from the wages of its employees and depositing the same alongwith the employer's share with the Provident Fund

Commissioner, Indore. They deposited the amount till 31-3-1965 when due to certain adverse conditions the mill had to be closed. Intimation of closing down of the mill was given to respondent No. 1, Indore by registered notice (P-2), dated 31-3-1965. It was served on respondent No. 1 as apparent from acknowledgment (P-3), dated 3-4-1964. It was informed to respondent Nos. 1 and 2 that no provident fund shall be collected in future. The employees were removed. There was no question of payment of wages, hence, no question of contribution of employer's share arose. Respondent No. 1 accepted the position and never raised any demand. On circumstances being favourable, petitioner mill was re-started in the year 1985 on a much smaller scale with total number of employees varying between 8 to 10 but never reaching the figure of 20, as such the Act of 1952 was not attracted, considering the number of employees, hence, no contribution towards provident fund was made to respondent No. 1. It was not brought to the notice of the petitioner that code No. M.P. 423 continued to be operative. It is submitted that with the closure of mill in the year 1965 code No. M.P. 423 became extinct and could not be invoked after the re-start of the company so as to give it retrospective operation, specially so when the total number of employees under the new venture were never 20 or more. On 16-4-88, 8-4-89 and 21-3-90 the Enforcement Officer, respondent No. 4 under the employment of Regional Provident Fund Commissioner visited the mill and drew his inspection reports behind the back of petitioners and notice (P-4) was served on 16-4-88 calling upon the petitioners to comply with the provisions of the Act w.e.f. January, 1986. Subsequently notices (P-5 & P-6) were also issued on 8-4-89 and 21-3-90. Without holding any enquiry and or giving an opportunity to the petitioners to be heard the respondent No. 1 illegally rejected the representation of petitioners and has held that provisions of the Act were applicable. An order (P-7) was passed on 7-2-1991. Amount was quantified. Recovery notice (P-8) was issued on 14-3-91. Petitioner filed a Misc. Petition No. 1300/91 (Raj Kumar Oil Mills Pvt. Ltd., Damoh v. Regional Provident Fund Commissioner and Ors.) in this Court. Same was decided, an order (P-9) passed, it was directed that petitioners be given opportunity of hearing and to lead necessary evidence. Pursuant to the direction matter was again re-examined. An order (P-10) was passed on 2-1-95 holding that once the provisions of the Act of 1952 are made applicable, its closure for any number of years will not cease the liability of the petitioners.

3. Petitioners have submitted that for 20 years there was no business activities. There were only 4 employees of the petitioners during the period from 1-1-88 to 31-12-89. Petitioners filed representation (P-11) to recall the order on 1-2-95, however, an order (P-12) was passed on 21-6-96. Petitioner was required to make the payment from 1-1-90 to October, 1995. Again the mill was closed on 2-7-96 w.e.f. 1-6-96 and came under the liquidation. The fact was informed. The mill was lying closed from November, 1995. Petitioner was called upon to make the payment of Rs. 1984/- from November, 1995 to March, 1996 as per order (P-16), dated 26-9-96, hence, this petition has been preferred.

4. In the return filed by the respondents it is contended that no demand has been raised for the period of closure. After the re-start of the mill it was necessary to make the compliance of the provisions of the Act of 1952. From January, 1988 the compliance was stopped. The petitioner should have deposited provident fund contribution even in respect of skeleton staff such as watchman, office staff if he has employed during the closure time and should have submitted "nil" return during closure period if no such employee was employed and thereafter on re-start should have made the payment as mandated under the Act of 1952. Respondents never accepted that there would be no demand after the closure of the mill. There was necessity to send the "nil" return to the respondents by 25th of every month during the period of closure. The demand raised is proper. The code number MP/423 never became extinct as the company was all along existing. The subsequent fall in the number of employee has no role to play once the Act applies. Respondents have found that persons were employed on monthly basis and the rest on weekly payment basis. Because of the closure there was no change in composition of the owner, place or change in the line of production, hence, liability has been rightly fastened; no case for interference is made out in this writ petition.

5. Shri M.L. Jaiswal, Sr. Advocate appearing with Ms. Vandana Shrivastava, Advocate for petitioners, has submitted that it is a case where there was closure for 20 years, for 20 years the compliance was not insisted. The company was re-started in the year 1985 and at that time number of employees were at no point of time 20 or more, thus, when there was practical closure, removal of the employees than re-start, liability of the petitioners ceased to make compliance of the provisions of the Act of 1952. He has placed reliance on a decision of Karnataka High Court in *Purex Laboratories India (P) Ltd., Bangalore v. Regional Provident Fund Commissioner, Bangalore* 1998 (1) LLJ 780. He has submitted that practicability has to prevail over the theoretical interpretation of the provisions of the Act of 1952. He has also tried to distinguish the decision of the Apex Court in *Sayaji Mills Ltd. Vs. Regional Provident Fund Commissioner*, . He has submitted that the Apex Court has dealt with the case of closure for a short period in *Sayaji Mills Ltd.* "s, instant case is of the closure for the period of two decades, after two decades when production was re-started the liability was only to be fastened in case number of the employees were 20 or more, hence, the impugned order be set aside.

6. Shri S.C. Sharma, learned Sr. Advocate with Shri Harshit Patel, Advocate for respondents, has submitted that in view of the provisions contained in Sub-section (5) of Section 1 of the Act of 1952, once Act is made applicable to an establishment it shall continue to be governed by this Act notwithstanding that the number of persons employed therein at any time falls below twenty. He has further submitted that in case there was closure for any reason whatsoever on re-start, there was an obligation to tender the amount in view of the aforesaid provisions, exemption which was prayed was not granted, thus, liability which has been fastened for the period there was no closure, is proper, hence, no case

for interference in this writ petition is made out.

7. There is no provision in the Act in case there is closure for any reason and then re-start of the unit, the liability to comply ceases on re-start of an establishment, on the contrary mandate of Sub-section (5) of Section 1 of the Act of 1952 is clear which provides thus:

1.(5) An establishment to which this Act applies shall continue to be governed by this Act notwithstanding that the number of persons employed therein at any time falls below twenty.

8. There may be closure for several reasons such as factory holidays, strikes, lock outs, temporary break down of machinery, periodic repairs to be effected to the machinery in the factory, non-availability of raw materials, paucity of finance or for any other reasons. It is not in dispute that the provision of the Act was made applicable and there was re-start of the company in the year 1985 without change of ownership, place or line of production. The mandate of Section 1(5) of the Act of 1952 is clear, even on re-start of establishment if the number has come down below 20, liability persists, exemption was prayed for and was declined as rightly conceded by Shri M.L. Jaiswal, learned Sr. Counsel for petitioners. In my opinion, merely by the fact that there was closure for a longer period, position of law cannot change. The facts of the case in *Purex Laboratories India (P) Ltd., Bangalore v. Regional Provident Fund Commissioner, Bangalore* case (supra), were totally different, it was not the case of re-start of the production, it was a case of non-existing establishment. Here the establishment was existing at the relevant time when compliance was sought, it did not become non-existing establishment at any point of time. The Apex Court in *Sayaji Mills Ltd. v. Regional Provident Fund Commissioner* (supra), has laid down that 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. Their Lordships further observed that 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 various causes. It may also be interrupted on account of an order of Court directing sale of the assets of the company owning the factory during winding up proceedings. Interruption in the running of a factory which is governed by the Act brought about by any of the reasons without more cannot be construed resulting in the factory ceasing to 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. The Apex Court has laid down thus:

6. 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 exception u/s 16(1)(b) 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 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, lock outs, temporary breakdown of machinery, periodic repairs to be effected to the machinery in the factory, nonavailability 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 a 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* (Misc. Appln. No. 289 of 1956, disposed of on November 5, 1956). 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.

11. This is not a case where the old factory was reduced into scrap and a new factory was erected in its place. Nor can it be said that there was total discontinuity brought about between the old factory and the factory which was restarted after the appellant purchased it. The stoppage of production was brought about temporarily as stated earlier by the winding up order and the factory was restarted after it was sold to the appellant by the Official Liquidator. The finding of fact recorded by the Trial Court in this case which is affirmed by the High Court clearly establishes that it was the same old factory which recommenced production on November 12, 1955. What is of significance is that a substantial number of workmen and staff who were working under the former management had been employed by the appellant though it is claimed that they had entered into new contracts of employment. Mere investment of additional capital or effecting of repairs to the existing machinery before it was restarted, the diversification of the lines of production or change of ownership would not amount to the establishment of a new factory attracting the exemption u/s 16(1)(b) of the Act of a fresh period of three years.

Merely due to the fact that there was closure for 20 years, there was no change in composition of the owner, place or in the line of production, establishment was re-started, as such it continued to be governed by the Act, hence, liability fastened was in accordance with law. I have no hesitation to reject the

submissions raised by petitioners" Counsel.

9. Resultantly, writ petition being devoid of substance, is hereby dismissed. No costs.