(2002) 04 RAJ CK 0109

In the Rajasthan High Court

Case No : C.S.A. (W) No. 206 of 1991

Regional Provident Fund Commissioner and Another — APPELLANT

Vs

Shree Syntex — RESPONDENT

Date of Decision : 01-04-2002

Acts Referred:
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 1(3)(9), 16(1), 2A

Citation : (2002) 95 FLR 278 : (2002) 3 LLJ 852 : (2002) WLC 601

Hon'ble Judges : Shashi Kant Sharma, J;M.R. Calla, J

Bench : Division Bench

Advocate : Narendra Jain and N.C. Jain, for the Appellant; N.K. Maloo, for the Respondent

Final Decision : Allowed

Judgement

1. This is an appeal by Regional Provident Fund Commissioner, Rajasthan, Jaipur and Union of India i.e. respondents in the original writ petition. The judgment and order dated November 6, 1989 passed by the learned single Judge is under challenge whereby the petition of original petitioner Shree Syntex i.e. respondent herein was allowed.

2. It is not in dispute that Shrec SyntEx is a Factory registered under the Factories Act, 1948 and has been functioning as the unit of Shree Agencies, a registered partnership firm having its registered office at Calcutta. Shree Agencies is a Commercial Establishment under Shops and Commercial Establishments Act since September 3, 1973 and had also established its branch office at Kota in the year 1974. While Shree Agencies is engaged in the activity of trading in goods prepared from Jute and Hessian cloth at Calcutta, Shree Syntex commenced its production on and from June 24, 1980 and is engaged in the manufacture of HDPE woven cloths and bags from HDPE granules. Shree Syntex came with the case that it is an independant manufacturing unit and since it had commenced its production on June 24, 1980, it was entitled to

infancy benefit u/s 16 of the Employees'' Provident Funds and Miscellaneous Provisions Act, 1952 (for Short EPF Act, 1952) for a period of 5 years but in February, 1984 the number of employees crossed the limit of 50, infancy benefits were available upto February 1984 only and since then, the factory was making compliance of the provisions of the EPF Act on and from March 1984. The Regional Provident Fund Commissioner vide his letter dated March 21, 1984 required that whereas Shree Syntex Ltd. factory had come within the purview of the Act with effect from March 31, 1993, it should deposit provident fund with effect from April, 1983 and as such Shree Syntex Ltd. was not entitled for the benefit of infancy from 1983 onwards. Proceedings u/s 7-A of the Act were commenced. The Commissioner after inquiry passed an order dated March 14, 1988 holding that the factory of Shree Syntex was a branch of Shree Agencies and was not entitled to fresh infancy benefit u/s 16(1)(b) in respect of the factory at Kota, Shree Syntex should deposit the provident fund for employees employed in all the branches of Shree Agencies both at Calcutta and Kota along with employees of Shree Syntex Limited. This order dated March 14, 1988 passed by the Regional Provident Fund Commissioner was challenged through the writ petition, the same had been sustained and the petition had been allowed.

3. Mr. Jain learned counsel for the appellants has assailed this order on the ground that in fact Shree Syntex was owned by Shree Agencies and Shree Syntex was under the effective control and supervision of Shree Agencies, the factory of Shree Syntex was only an establishment of Shree Agencies as it was also financed by Shree Agencies and it fulfills all the requirements so as to be treated as an establishment of Shree Agencies and therefore liable to pay contribution towards the provident fund of employees. Mr. Jain while referring to Section 1(3)(a), 2-A and 16(1)(b) of the EPF Act submits that in view of the order dated March 14, 1988 passed by the Regional Provident Fund Commissioner, there was no question of any entitlement of the infancy benefits for the period in question. Section l(33)(a), 2-A and 16(1)(b) of the EPF Act, 1952 are reproduced as under:

"Section-1 Short title, extent and application. -

(1).....

(2).....

(3) Subject to the provisions contained in Section 16, it applies-

"(a) to every establishment which is a factory engaged in any industry specified in Schedule I and in which (twenty) or more persons are employed, and"

"2-A Establishment to include all departments and branches- For the removal of doubts, it is hereby declared that where an establishment consists of different departments or has branches, whether situated in the same place or in different places, all such departments or branches shall be treated as parts of the same establishment."

"16. Act not to apply to certain establishments:

(1) This Act shall not apply-

(a).......

(b) to any other establishment belonging to or under the control of the Central Government or a State Government and whose employees are entitled to the benefit of contributory provident fund or old age pension in accordance with any scheme or rule framed by the Central Government or the State Government governing all such benefits; or"

4. Learned counsel for the appellants placed strong reliance on the judgment rendered by the Supreme Court in the case of Regional Provident Fund Commissioner, Jaipur Vs. Naraini Udyog and Others, and Rajasthan Prem Krishan Goods Transport Co. Vs. Regional Provident Fund Commissioner, New Delhi and Others, As against it, Mr. Maloo learned counsel appearing for respondent-Shree Syntex has submitted that there was no question to treat the establishment of Shree Syntex as part and parcel of Agencies and it was not liable to pay the contribution of the provident fund for the employees. He has placed strong reliance on a decision of Division Bench rendered in the case of J. K. Synthetics v. Regional Commissioner, Employees Provident Fund, Rajasthan, Jaipur decided on May 13, 1985 and it is submitted that there is no question of depriving the respondent Shree Syntex from infancy benefit and it was entitled to such infancy benefit for the period in question.

5. We have heard the submissions made on behalf of both the sides.

6. In the case of The Associated Cement Companies Limited, Chaibassa Cement Works, Jhinkpani Vs. Their Workmen, the Supreme Court held that no specific test was prescribed under the EPF Act for determining establishment. The Supreme Court considered the tests with regard to unity of ownership, management of control, unity of employment and conditions of service and functional integrality and general unity of purpose etc. In the later part of the para of this very judgment, the Hon''ble Supreme Court considered the question as to how the relation between units is to be judged and then observed that it must depend upon the facts proved having regard to the scheme and object of the statute which gives the right of unemployment compensation and also prescribes a disqualification therefor. The Supreme Court has classified three categories in this regard where there is a case of unity of ownership, management and control may be the important test; in another case functional integrality or general unity may be the important test.

7. We find from the pleadings in the case at hand that so far as the common ownership is concerned, the same is not in dispute. The unity to finance is also not in dispute. The Regional Provident Fund Commissioner while passing the order u/s 7-A of EPF Act on March 14, 1988 in this case has considered the factory of Shree Syntex owned by Shree Agencies and that it was only a branch

of the establishment of Shree Agencies within the meaning of Section 2-A of the Act, the factory was controlled by the head office at Calcutta and the entire capital of the factory had been provided by Shree Agencies only by using Central Sales Tax Act and State Sales Tax Act numbers issued to Shree Agencies and fund was issued for the factory of Shree Syntex also, and, products of Shree Syntex were being sold by Shree Agencies. The management and supervisory staff of Shree Agencies and Shree Syntex were common. After consideration of the material available on record, we have come to the conclusion that it was covered under the Act with effect from March, 1983 and it was not entitled to fresh infancy period u/s 16(1)(b) and thus it has been correctly found that Shree Syntex was amendable to EPF Act, 1952. In the case of Regional Provident Fund Commissioner, Jaipur (supra), the Hon''ble Supreme Court held that in case of the firms having functional unity and integrality it was rightly held by the Commissioner as constituting a single establishment, the mere fact that they were separately registered under the Companies Act and were represented separately by members of Joint Family was of no consequence. In yet another case of Rajasthan Prem Krishan Goods Transport Co. v. Regional Provident Fund Commissioner, New Delhi and Ors. (supra), the same view was taken on the basis of finding that there was unity of purpose on each count and the Supreme Court noticed the finding recorded by Regional Commissioner with regard to unity of purpose.

8. Learned single Judge has decided the case on the basis of the decision rendered by the Division Bench in the case of J.K. Synthetics Ltd. (supra). Copies of statements of witnesses placed on record with the writ petition as Annexures 3 and 4, also support the case that the factory was an establishment of Shree Agencies and on the touch-stone of these tests with regard to unity of ownership, unity of finance and supervision and control, it cannot be said that Shree Syntex was not amenable to the provisions of the Act. It is clearly borne out that there is no question of infancy benefit for the period in question and for the purpose of this Act could not be treated as a separate establishment. It is, of course, true the word ''establishment'' has not been defined but the fact remains that the factory of Shree Syntex is an establishment of Shree Agencies and entire finance is being provided by Shree Agencies and thus there is an effective financial control and supervision of Shree Agencies. The Central Sales Tax and Rajasthan Sales Tax are being paid by Shree Agencies for Shree Syntex on the same numbers and Shree Syntex has no separate numbers. The argument of Mr. Maloo learned counsel for the respondent herein is that since the factory could not be registered for the purpose of Sales Tax Act, the Sales Tax was deposited by the Shree Agencies. However, it is clear from the material available on record that Shree Agencies itself had accepted the liability to pay the Central Sales Tax and Rajasthan Sales Tax for Shree Syntex and virtually it amounts to the marketing of the products of Shree Syntex by Shree Agencies. It is not necessary that all the tests must co-exist. It depends upon the facts and circumstances of each case and any of the tests laid down by the Supreme Court could be made

use of in the facts of the case at hand and the same has been rightly made use of. Mr. Maloo has submitted that Shree S.K. Bhargava who has been examined by the department had not seen any record and without verification of record, proceedings were initiated. We find that this witness namely Shree S.K. Bhargava has categorically deposed in examination in chief that he had verified the record relating to shop and establishment, wages, attendance and other related papers and in answer to the last question he has said that the employees of Shree Syntex were borne in the roll of Shree Agencies and accordingly I took them as working in common for bom the establishments; these were from 571-Chhawani Kota office of Shree Syntex. When he deposed orally that he did not look into any record, the meaning and reference was with regard to the record relating to the verbal statements which had been made. The deposition made by Shree Narain Kalani son of Shri R.S. Kalani on behalf of employers also shows that important ingredients of the tests were satisfied in this case. So far as the case of J.K. Synthetics (supra) is concerned, it may be pointed out that it was decided on its own facts as they were available in that case and on the basis of said decision wherein the Court had taken notice of the fact that there was lack of application of mind while passing the order without taking note of important affidavits and other material available on record, and therefore that case cannot be applied to the facts and circumstances of the present case in the fact-situation obtaining in this case. Even otherwise, there is no basis to apply the case of J.K. Synthetics in face of the observation made by the Hon''ble Supreme Court in the case of Regional Provident Fund Commissioner, Rajasthan, Jaipur v. Naraini Udyog and Ors. (supra) in which the Supreme Court has held that the firms having functional unity and integrality were rightly held by the Commissioner as constituting a single establishment. The wide definition of the word ''establishment'' and beneficial nature of the Act has to be taken note of in order to reach correct conclusion. In this view of the matter, we find that the view taken by the learned single Judge is not sustainable. This appeal succeeds and the same is hereby allowed. The impugned order dated November 6, 1989 passed by the learned Single judge is hereby set aside. The order as has been passed by the Regional Provident Fund Commissioner, Rajasthan, Jaipur dated March 14, 1988 does not warrant any interference. In the facts and circumstances of the case, costs are made easy.

