

(2006) 11 DEL CK 0026
In the Delhi High Court
Case No : WP (C) No. 5669 of 2001

Regional Provident Fund Commissioner	APPELLANT
Vs	
L.N. Gadodia and Sons and Others	RESPONDENT

Date of Decision : 30-11-2006

Acts Referred:

Constitution of India, 1950 — Article 43
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 1(3),
2A, 7A

Citation : (2006) 11 DEL CK 0026

Hon'ble Judges : S.N. Dhingra, J

Bench : Single Bench

Advocate : R.C. Chawla, for the Appellant; S.P. Arora and D.R. Tutani, for the Respondent

Final Decision : Allowed

Judgement

Shiv Narayan Dhingra, J.—By this writ petition, the petitioner has challenged the validity of the EPF Tribunal's order dated 25.10.2000 passed in an appeal against the order of Regional Provident Fund Commissioner dated 28.1.2000.

2. Briefly the facts are that the Regional Provident Fund Commissioner, u/s 7A of the Employees Provident Funds and Misc. Provisions Act, 1952(hereinafter referred to as "the Act) held that the respondent No. 1 and 2 were two units of single establishment. He directed the two to be clubbed together and be treated as one establishment for compliance with the provisions of the Act and directed the parties to appear for determination of the dues.

3. Against the order of Regional Provident Fund Commissioner, both the respondents i.e. 1 and 2, preferred an appeal pleading that the companies were separate establishments engaged in different business and could not be clubbed together. The respondent No. 1 M/s L.N. Gadodia and Sons Pvt. Ltd. was established in the year 1941 and registered under the Companies Act and respondent No. 2 M/s Delhi Farming and Constructions, Pvt. Ltd. was

incorporated in the year 1930. The respondent No. 2 M/s Delhi Farming and Constructions Pvt. Ltd. was earlier known as Delhi Cattle Firm Pvt. Ltd. Its name was changed in the year 1983. This company was acquiring lands for purposes of cultivation and carrying on other agricultural activities. Subsequently, all lands of the company was acquired by Delhi Administration and thereafter it entered into fresh activities of purchasing of gas cylinders and giving them on hire. It later started business of supplying security equipments to Government of India.

It also entered into supply of gray/processed fabrics to ready made garment manufacturers as a side business. This company was carrying on its business and commercial activities presently at 116 Hans Bhawan Bahadur Shah Jaffar Marg. M/s L.N. Gadodia and Sons Pvt. Ltd. had its branch at Bombay, Amritsar, Ahmedabad and Kanpur and its registered office was situated at 1112, Kucha Natwa, Chandni Chowk and the establishment was mainly working as selling agents for Calico Mills, Ahmedabad, Tata Mills, Ahmedabad etc. and also doing trading in wholesale business in cloth.

4. Mr. T.P. Gadodia and Smt. Sudha Gadodia were the two directors in both the companies. Mr. T.P. Gadodia was the managing director in both the companies. The enquiry revealed that a loan of Rs. 5 lacs was given by one company to other. The two companies were having Mr. Venkatasheran as a common Technical Manager and Mr. S.K. Shema as common commercial manager. On inspection, it was found that both the companies were functioning from the same office at 1122, Kucha Natwa, Chandi Chowk, Delhi. They were having their common telephone numbers on the companies stationary being 3318668 (New numbers being 2512890 and 2513009). The Regional Provident Funds Commissioner, on the basis of two companies having common directors, two common employees, having inter-se loan transaction with each other, using same office and same telephone numbers, came to conclusion that there was functional and financial integrality between the two companies and clubbed the two companies for counting their employees for the purpose of provisions of the Act.

5. The order of the Regional Provident Funds Commissioner was challenged before the Tribunal on the ground that no notice was served u/s 2A of the Act on the appellants. Both the companies were incorporated with a gap of about 11 years. The two companies were engaged in different type of business and they were having separate managements. Advancement of loan of Rs. 5 lacs in a period of 50 years of incorporation would not create financial integrity. It was denied that Mr. Sema and Mr. Venkatesh were the common employees in both the companies. It was submitted that at one time they were employee of one company only. It was, however, not denied that Smt. Sudha Gadodia and Mr. T.P. Gadodia were directors in both the companies and Mr. T.P. Gadodia was the managing director in both the companies.

6. The Tribunal held that the Regional Provident Funds Commissioner was not dealing with two establishments of one owner but these were two companies having distinct legal identity, one born in 1930 and other born in 1941. He

observed that the shareholders of a company have different identity than the company itself. Company being a juristic person, cannot be identified with the shareholders. There was no bar at one person being managing director of the two companies. The two companies cannot be considered as one establishment because of common directors and common managing director. There was no evidence that Mr.Sema and Mr. Venkatesh were, at one time, in both the companies. Mere giving of loan of Rs. 5 lacs in the year 1988, would not make them financially integrated companies. The Tribunal held that an individual can set up as many establishments as he likes. If he has intention to keep them separate and maintain all records separate, they cannot be clubbed together. The Tribunal further observed that u/s 2A of the Act, only a branch, a department, can be considered to be the establishment itself and for that, there should be one ownership of the two establishments and allowed the appeal.

7. The order of the Tribunal has been challenged on the ground that the Act was a social welfare legislation and a narrow interpretation cannot be placed on Section 2A of the Act. The two companies having common management, common premises, common telephone, though doing two separate nature of business, can be clubbed together for the purpose of Act. The Tribunal had ignored the entire evidence showing interlinking of the two units and the crucial circumstance that both the companies were having same directors and same managing director. There was a major loan transaction from one company to other.

The two employees were common employees. They were shown working in one or the other company under the same director but practically, they were working for both units. The Tribunal went wrong in holding that since the two units were incorporated companies, they cannot be clubbed together. The Tribunal's view that since the companies were incorporated in different years, Therefore, they cannot be considered as one, was contrary to law.

8. The petitioner judgment relied upon the judgment Regional Provident Fund Commissioner, Jaipur Vs. Naraini Udyog and Others, wherein Supreme Court held:

On the basis thereof, the appellant has called upon them to contribute the amount u/s 7A of the Employees' Provident Funds and Miscellaneous Provision Act, 1952 (for short "the Act") holding that the above two concerns are establishments within the meaning of Section 1(3)(a) of the Act. The Division Bench in the impugned order had held that that they were registered under the Companies Act as two different individual identities, though they are represented by the members of the same family. Therefore, they are two independent companies. Both cannot be clubbed together for the purpose of levying contribution u/s 7A of the Act. We have gone through the reasoning given by the High Court. We find that the High Court is wholly unjustified in reaching the above conclusion. It is true, as found by the High Court, that they are registered as two independent units and represented separately by the members of a Hindu Undivided Joint Family. Nonetheless the Commissioner recorded, as a fact, the

functional unity and integrity between the two concerns. Consequently, the definition of "establishment" which was widely defined would encompass within its ambit the two units as an establishment for the purpose of the Act. Accordingly, the High Court had not considered in proper provide healthy security to the workmen. In the ultimate analysis the employer gets maximum out-turn of his production by ensuring health insurance to its employees which is the fundamental right to the latter.

9. The petitioner also relied upon the judgment of this Court delivered in CW No. 1881 of 1982 on 20.4.2004, Hotel Jaipur Ashok and Anr. v. Miss K.P. Sarojini, Legal Adviser to the Government of India. In this case Hotel Jaipur Ashok of Jaipur had claimed benefit of infancy period on the ground that it was a separate establishment. This Court observed that one has to see the sum and substance of relationship in broad context of the objects of the Act. Looked at in this light it hardly matters if the hotel was described as a unit and not a branch or department of ITDC. The employees of one unit of ITDC can be transferred to other unit and such transfers have taken place among the employees of the hotels were under the control of ITDC. Although a separate balance sheet of Hotel Ashok was being maintained but its balance sheet also formed a part of the balance sheet of the ITDC and profit and loss account. So, ITDC and Hotel Jaipur Ashok were one establishment and not entitled for infancy period.

10. The petitioner has also relied upon 1997 LIC 146 Rajasthan Perm Krishan Goods Transport v. R.F.F. Commr., New Delhi, the Supreme Court held:

It is beyond dispute that if the two supposed entities were to be treated separate, the provisions of the Act would not apply. But, if they be treated as one, the provisions of the Act would apply. It can otherwise be not disputed that on proper facts being established, two apparently separate entities can be clubbed into one to carry out the purposes of the Act and a fraudulent device adopted by a designing management can be exploded and matters put to their proper perspective.

The finding recorded by the Regional Provident Fund Commissioner is that there is unity of purpose on each count inasmuch as the place of business is common, the management is common, the letter heads bear the same telephone numbers and 10 partners of the appellant are common out of the 13 partners of the third respondent. The Trucks plied by the two entitles are owned by the partners and are being hired through both the units. The respective employees engaged by the two entities when added together, bring the integrated entities within the grip of the Act; so it the finding. Now, this finding is essentially one of the fact or on legitimate inferences drawn from facts. Nothing could be suggested on behalf of the appellant as to why could the Regional Provident Fund Commissioner not pierce the veil and read between the lines within the out wardliness of the two apparents. No legal bar could be pointed out by the learned Counsel as to why the views of the Regional Provident Fund Commissioner, as affirmed by the Central Government, be overturned.

11. The respondent has relied upon Regional Provident Fund Commissioner and Another Vs. Dharamsi Morarji Chemical Co. Ltd., the Supreme Court held:

It is true that if an establishment is found, as a fact, to consist of different departments or branches and if the departments and branches are located at different places, the establishment would still be covered by the not of Section 2A and the branches and departments cannot be said to be only on that ground not a part and parcel of the parent establishment. However, on the facts of the present case, the only connecting link which could be pressed in service by the learned Counsel for the appellant was the fact that the respondent-Company was the owner not only of the Ambarnath factory but also of Roha factory. On the basis of common ownership it was submitted that necessarily the Board of Directors could control and supervise the working of Roha factory also and Therefore, according to the learned Counsel, it could be said that there was interconnection between Ambarnath factory and Roha factory and it could be said that there was supervisory, financial or managerial control of the same Board of Directors. So far as this contention is concerned the finding reached by the High Court, as extracted earlier, clearly shows that there was no evidence to indicate any such interconnection between the two factories in the matter of supervisory, financial or managerial control. Nothing could be pointed out to us to contraindicate this finding. Therefore, the net result is that the only connecting link which could be effectively pressed in service by the learned Counsel for the appellant for culling out interconnection between Ambarnath factory and Roha factory was that both of them were owned by a common owner, namely, the respondent-Company and the Board of Directors were common.

That by itself cannot be sufficient unless there is clear evidence to show that there was interconnection between these two units and there was common supervisory, financial or managerial control. As there is no such evidence in the present case, on the peculiar facts of this case, it is not possible to agree with the learned Counsel for the appellant that Roha factory was a part and parcel of Ambarnath factory or it was an adjunct of the main parent establishment functioning at Ambarnath since 1921.

12. The respondent has also relied upon Workmen of The Straw Board Manufacturing Co. Ltd. Vs. Straw Board Manufacturing Co. Ltd., Ltd., the Supreme Court held:

The learned Counsel for the appellants drew out attention to a number of decisions of this Court with regard to the tests of determining what is "one establishment". In the The Associated Cement Companies Limited, Chaibassa Cement Works, Jhinkpani Vs. Their Workmen, the Court observed as follows:

Several tests were referred to in the course of arguments before us, such as, geographical proximity, unity of ownership, management and control, unity of employment and conditions of service, functional integrality, general unity of purpose etc?.It is, perhaps impossible to lay down any one test as an absolute

and invariable test for all cases. The real purpose of these test is to find out the true relation between the parts, branches, units, etc. If in their true relation they constitute one integrated whole, we say that the establishment is one; if on the contrary they do not constitute one integrated whole, each unit is then a separate unit. How the relation between the units will be judged must depend on the facts proved, having regard to the scheme and object of the statute which gives the rights of unemployment compensation and also prescribes disqualification therefore. Thus, in one case the unity of ownership, management and control may be important test; in another case functional integrality or genera unity maybe the important test; and in still another case, the important test may be the unity of employment. Indeed, in a large number of cases several tests may fall for consideration at the same time.

13. The Employees' Provident Funds and Miscellaneous Provisions Act, 1952 is a welfare legislation enacted for the benefit of employees and to secure their well being and provide them with some financial security in future when the employees are not in physical capacity to earn. In *Sayaji Mills Ltd. Vs. Regional Provident Fund Commissioner*, Supreme Court explained the intention of the Act in the following words:

At the outset it has to be stated that the Act has been brought into force in order to provide for the institution of provident funds for the benefit of the employees in factories and establishments. Article 43 of the Constitution requires the State to endeavor to secure by suitable legislation or economic organisation or in any other way to all workers, agricultural, industrial or otherwise among others conditions of work ensuring a decent standard of life and full enjoyment of leisure. The provision of the provident fund scheme is intended to encourage the habit of thrift amongst the employees and to make available to them either at the time of their retirement or earlier, if necessary, substantial amounts for their use from out of the provident fund amount standing to their credit which is made up of the contributions made by the employers as well as the employees concerned. Therefore, the Act 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 should as far as possible be avoided.

14. The provisions of the Act have to be interpreted keeping in view this objective of the Act. The purpose of putting limitation of twenty employees as cut off point was to see that unnecessary burden should not be put on the employer if the employer is a small employer not capable of bearing the burden. The same was the purpose for providing infancy period. Thus, the Act has taken care to see that unnecessary burden should not be put on the employer while providing for benefit to the workman. The legislature did a balancing between the interest of the employer and the worker. If the employer is a new employer though having more than 20 employees not capable of bearing the burden due to new business, he should be given infancy period and if the employer is a small employer, who has not employed even 20 persons, he should not be burdened. But the Act also

provides that where new branches and units are opened then those branches and units must be considered as parts of the same establishment to ensure that by fragmenting its business or opening new branches, the employer though capable of bearing the burden, does not escape the liability under the Act. Once the viability and stability of business is there, the employer should not be allowed to deprive the workers the benefit of the EPF Act by opening different units and branches and when the business grows, the welfare of the employees should also be taken care of. The growth of business is seen as a sign of affordability of the employer to comply with the beneficial legislation.

15. It is normally seen that the intention of the employer is that while he is keep growing by leaps and bounds, the status of the employees should remain static and the employee should be paid as less as possible. One of the strategies adopted for this is that different companies and firms are opened by same family members in different names. In this way, the family multiplies its wealth but the workman are kept deprived of the beneficial legislations by keeping their number less than 20 in each company or firm. Though the business of the family expands but business is expanded not in one name but in different names so that every firm or private limited company is treated as a separate entity for the purpose of different beneficial legislations. In order to meet this situation, the legislation enacted Section 2A of the Employees Provident Funds and Miscellaneous Provisions Act, 1952, which reads as follows:

2A.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 situate in the same place or in different places, all such departments or branches shall be treated as parts of the same establishment.

16. In *The Associated Cement Companies Limited, Chaibassa Cement Works, Jhinkpani Vs. Their Workmen*, , the Supreme Court held that it was impossible to lay down any one test as an absolute and invariable test for all cases. It observed that the real purpose of these tests would be to find out the true relation between the parts, branches, units etc. If, in their true relations, they are considered one integrated whole, the establishment is one. If, on the contrary, they did not constitute one integrated whole such units are then separate units. The relation between the units has to be judged on the facts proved and having regard to scheme and and objects of the statute, which gives right to the workman. In one case, the unit of owner, management and control may be an important test, in another case, functional integrity or general unity may be an important test and and still in another case the important tests may be unity of employees. In large number of cases, several tests may apply for consideration at the same time. The difficulty in this arises because of complexities of modern industrial organization. Many enterprises may have functional integrity between the factories which are separately owned and some may be integrated in parts with units or factories having the same ownership and

any part of that factory or plant which are independently owned.

17. It would be necessary to determine the object of integrity and then to apply the various tests laid down. There is no doubt that a private limited company is a separate entity but where several private limited companies are found run by same family and established while expanding its business, such companies or firms run by same family have to be considered as one business establishment. The court can always pierce the corporate veil and look into the facts as to who are the persons running the company. Where different private limited companies are run by the same family and the number of employees in each company is kept less than 20, so as to escape the application of beneficial Acts favoring the workmen, the courts can consider that all these companies/firms form one business establishment. By fragmentation of business into different private limited companies, the family ensures continuous growth of its wealth while the growth of the workmen is kept standstill. The two respondents companies, were incorporated by one family and were being managed by same managing director, having common directors, common premises, common telephone and some common employees, I consider such companies are to be treated as one establishment for the purpose of legislations like EPF and ESI Act so that the employer continuously grow, he is not able to deprive the benefits of his growth to the workman.

18. In *Western India Match Co. Ltd. Vs. Their Workmen*, , Supreme Court observed that the principles to be followed in deciding these problems have so often been considered by the Court and the various tests evolved can be applied to assist the solutions of the problems. Many tests that have been evolved are namely functional integrity, inter dependence or community of financial control and management, community of man-power and its control, recruitment and discipline, the manner in which the employer has organized different activities, whether he has treated them as independent or one another or as inter connected and interdependent, enjoy pride of place. But these tests, by no means are exhaustive.

19. In *Management of Wenger and Company v. Their Workmen* 1964 SC 864 where the issue was whether the wine shop is an integral to running the restaurant. Supreme Court observed as under:

The question as to whether industrial establishments owned by the same management constitute separate units or one establishment has been considered by this Court on several occasions. Several factors are relevant in deciding this question. But it is important to bear in mind the significance or importance of these relevant factors would not be the same in each case; whether or not the two units constitute one establishment or really two separate and independent units, must be decided on the facts of each case. Mr, Pathak contends that the Tribunal was in error in holding that the restaurants cannot exist without the wine shops and that there is functional integrity between them. It may be conceded that the observation of the Tribunal that there is functional integrity

between a restaurant and a wine shop and that the restaurants cannot exist without wine shops, is not strictly accurate or correct. But the test of functional integrality or the test whether one unit can exist without having regard to the relevant facts of that case, and so, we are not prepared to accede to the argument that the absence of functional integrality and the fact that the two units can exist one without the other necessarily show that where they exist they are necessarily separate unit and do not amount to one establishment. It is hardly necessary to deal with this point elaborately because this Court had occasion to examine this problem in several decisions in the past, vide *The Associated Cement Companies Limited, Chaibassa Cement Works, Jhinkpani Vs. Their Workmen*, ; *Management of Pratap Press, New Delhi Vs. Secretary, Delhi Press Workers' Union and Its Workmen*, ; *The Management of Pakshiraja Studios Vs. The Workers in Pakshiraja Studios represented by the Secretary, Commercial and Allied Employees's Union*, ; *The Honorary Secretary, South India Millowners' Association and Others Vs. The Secretary, Coimbatore District Textile Workers' Union*, ; *The Fine Knitting Co., Ltd. Vs. The Industrial Court, Bombay and Others*, and *D.C.M. Chemical Works v. Its Workmen* 1962 I LLJ 888.

20. It is now settled law that the test of functional integrity is not an absolute test for all intends and purposes and the establishment as one. Neither test of nature of dependability is an absolute test. Two units though can exists without each other, still can form part of one establishment. The Court has to consider all facts and circumstances of the case to arrive at the conclusion whether the two units can be clubbed together for the purpose of EPF Act or not.

21. The arguments of the respondent is that two companies were having different business and were functioning as two separate units. Even the corporate office was also later shifted by one company. This argument must fail. Shifting of corporate office was after the inspection. The two employees also resigned from one company only after the inspection.

22. At the time of inspection, the two companies were having common corporate office, common telephone numbers and were being run by same management from the same premises. The employees were being swept between each other and the one company had given a loan to other to the tune of Rs. 5 lacs. While one company was having branches in different cities of country, the number of employees in Delhi office and in each branch, were kept below 20. The unity of the establishment can be gathered from the fact that the entire business of the two companies was being run by one family. The management and supervision was in the hands of the same managing director and the finances of one company were bring used by the other.

23. In *Rajasthan Prem Krishan Goods Transport v. R.P.F. Commissioner* 1997 LIC 146, Supreme Court observed as under: The finding recorded by the Regional Provident Fund Commissioner is that there is unity of purpose on each count inasmuch as the place of business is common, the management is common, the letter heads bear the same telephone numbers and 10 partners of the appellant

are common out of the 13 partners of the third respondent. The Trucks plied by the two entities are owned by the partners and are being hired through both the units. The respective employees engaged by the two entities when added together, bring the integrated entities within the grip of the Act; so is the finding. Now, this finding is essentially one of fact or on legitimate inferences drawn from facts. Nothing could be suggested on behalf of the appellant as to why could the Regional Provident Fund Commissioner not pierce the veil and read between the lines within the outwardness of the two apparents. No legal bar could be pointed out by the learned Counsel as to why the views of the Regional Provident Fund Commissioner, as affirmed by the Central Government be overturned.

24. I find that the Tribunal was swayed by the fact that the companies are separate legal entities and the Court cannot pierce the veil and look at share holdings. In view of the law laid down by the Apex Court, what is to be seen is the proximity of the two units, common management etc as discussed above. The order of the Tribunal is perverse being contrary to law and is hereby set aside. The writ petition is allowed. No orders as to costs.