

(1965) 09 MAD CK 0028
In the Madras High Court
Case No : Writ Appeal No. 122 of 1964

R.L. Sahni and Co.

APPELLANT

Vs

Union of India and Another

RESPONDENT

Date of Decision : 28-09-1965

Acts Referred:

Constitution of India, 1950 — Article 226
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 16, 2
Factories Act, 1948 — Section 7(1)

Citation : AIR 1966 Mad 416 : (1967) ILR (Mad) 214 : (1966) 2 LLJ 230 :
(1966) 79 LW 218

Hon'ble Judges : P. Chandra Reddy, C.J.; Natesan, J

Bench : Division Bench

Judgement

P. Chandra Reddy, C.J.

(1) This appeal is brought against the judgment of Srinivasan J. declining to quash the order of the Regional Provident Fund Commissioner calling upon the appellant to make contribution to the employees' Provident Fund.

(2) The appellant, a limited company which was incorporated on 27-4-1959, took on lease a building with equipment known as the Rajakumari

Theatre from the owner thereof. This theatre was leased by the owner to one Om Prakash Gupta, and, on the expiry of the lease, the owner

obtained possession of the property by instituting proceedings in the High Court. Thereafter lease of this theatre was granted to the appellant in

June 1960, as stated above. When the Regional Provident Fund Commissioner required the appellant to make the contribution under the

Employees Provident Funds Act from 15-6-1960, the date on which he started the cinema shows under the name and style of Sahani Cinema it

was urged on behalf of the appellant that since the company newly started business only with effect from 16-6-1960 it was entitled to protection

for five years, from 16-6-1960. Disagreeing with this contention the Regional Provident Fund Commissioner affirmed his earlier order for

contribution to the Employees Provident fund. His view was that the Rajakumari Theatre was in existence for a number of years and consequently

the fact that the appellant had taken a lease since 1960 did not mean that a new establishment had come into existence on that date. It was to

remove this order of the Regional Provident Fund Commissioner that the jurisdiction of this court under Art. 226 of the Constitution was invoked.

Srinivasan J. who heard the petition, declined to interfere with that order as he concurred in the opinion of the Regional Provident Fund

Commissioner. It is this conclusion of the learned Judge that is assailed in this writ appeal.

(3) It is maintained by Sri N. C. Raghavachari in support of this appeal that as the appellant was a new company incorporated for running the

business in June 1960 the exemption contemplated by the Act should be extended to this company since the establishment should be deemed to

have come into existence on that date. In other words, his contention is that the company running the theatre is an establishment within the

connotation of the Act and since protection is to be given to the persons that are associated with the concern the exemption should be extended

with reference to the date on which the business was started by the person and not with reference to the date on which the theatre came into being.

Sri Raghavachari argued that it is not the building and equipment that constitutes the establishment but it is the personnel that operates the theatre

that constitutes the establishment. To substantiate this argument he relies on a judgment of Anantanarayanan J. in Vittaldas Jagannathadas and

Another Vs. The Regional Provident Fund Commissioner, Madras and Another, .

(4) Since the answer to the contentions raised on behalf of the appellant depends upon the relevant statutory provisions it is useful to look at them

here. It is S. 16 of the Employees Provident Funds Act that exempts certain industrial organisations from the application of this Act for a certain

period. That section runs as follows:

16(1) This Act shall not apply; (a) to any establishment registered under the Co-

operative Societies Act 1912, or under any other law for the time

being in force in any State relating to co-operative Societies, employing less than 50 persons and working without the aid of power; or (b) to any

other establishment employing 50 or more persons or 20 or more, but less than 50 persons until the expiry of 3 years in the case of the former and

5 years in the case of the latter, from the date on which the establishment is, or has been, set up.

Explanation: For the removal of doubts, it is hereby declared that an establishment shall not be deemed to be newly set up merely by reason of a change in its location".

We are unconcerned with sub-sec. (2) of S. 16 in this enquiry. The question that is posed is whether the "establishment" within the contemplation

of the section is the personnel operating the organisation, whether industrial or business, or, whether it is the organisation itself.

(5) Sri Raghavachari contends that the word "establishment" is used by the legislature as meaning the employer since it is he that requires the

infancy protection till he establishes himself. In support of this argument he cited the judgment of Anantanarayanan J. as already referred to. The

passage relied upon by the appellant's counsel is as follows:

After reference to several authorities and "Words and Phrases Judicially defined" by Burrows, Vol. 2, I find that the most helpful definition of

establishment", at least in the context of the usage of that word in the present Act 19 of 1952, is that available in the Oxford Dictionary namely,

"organised body of men maintained for a purpose". Once we have this definition in perspective, and also keep in mind the principle that the Act

really applies to the factory or establishment or industrial organisation, whichever it might be termed, and not to changes in ownership, or to the

history of the organisation, which might include temporary closures, it seems to Managing Committee that the true way of looking at the liability

becomes fairly clear. On the entire complex of facts of a given case, can we conclude that the legal entity, "the establishment, came totally to an

end, and was succeeded by a fresh legal entity? If that is the case, then that fresh entity is the entity to which the Act applies as a first impact and, if

that entity is entitled to infancy protection, that protection will have to be granted as a matter of course".

It is seen that the learned Judge has equated ""establishment"" to a body of men maintained for the purpose. We may not be far wrong in concluding that he had in mind the body of employees working in the establishment. It is true that it is one of the meanings of the word ""establishment"" that is given in the Oxford Dictionary. That word contains several other meanings one of which is ""house of business"". That being so, we should adopt that meaning which fits in with the object and policy of the enactment.

(6) Now we will turn to the other provisions of the enactment to see if this interpretation can be borne by that word. The words ""employer"" and

employee"" are defined in S. 2 of the Act. Sec. 2(e) ""employer"" means--

(i) in relation to an establishment which is a factory, the owner or occupier of the factory including the agent of such owner or occupier, the legal

representative of a deceased owner or occupier and, where a person has been named as a manager of the factory under clause (f) of sub-sec. (1)

of S. 7 of the Factories Act, 1948, the person so named; and (ii) in relation to any other establishment, the person who, or the authority which, has

the ultimate control over the affairs of the establishment, and where the said affairs are entrusted to a manager, managing director, or managing

agent, such manager, managing director or managing agent"".

It is seen that ""employer"" and ""establishment"" are two distinct entities and it difficult to treat ""employer"" as synonymous with ""establishment

Employee"" is defined by the Act as follows:

2(f) ""employee"" means any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of an

establishment, and who gets his wages directly or indirectly from the employer, and includes any person employed by or through a contractor in or

in connection with the work of the establishment"".

It is plain from these definitions that ""establishment"" is not the same thing as ""employer"" or ""employee"" but different and distinct from ""employer"" or

employee"". That being so, the infancy protection, in our opinion, is to be given to establishments from the date of their being set up. As argued by

learned Standing Counsel for the Government of India, the expression ""set up"" with reference to individual running concerns would be

inappropriate and it would be apt only if understood as applying to industrial organisations.

(7) We do not think that the Explanation to S. 16 extracted above really comes to the rescue of the appellant. What is argued on the basis of this explanation by Sri Raghavachari is that if it was the intention of the legislature that the change of ownership of management was outside the scope of this exemption it would have been specifically stated so. We are not inclined to accede to this proposition. If the legislature had indicated that a change of location itself cannot lead to the inference that the establishment was newly set up, a fortiori, an establishment cannot be deemed to be newly set up by reason of change of hands. A change of ownership or change of hands will not make the establishment a new one. In our opinion the postponement of the application of the Act has reference only to the date of the coming into being of the industrial or business organisation and not to the date on which a particular person acquires interest in such an organisation. The mere fact that there is a new lessee or a new owner at different points of time does not mean that the establishment comes into existence on each of such occasions.

(8) It is true that the judgment of Anantanarayanan J. lends support to the contention raised by Sri Raghavachari. But with great respect we are unable to share the view of Anantanarayanan J. in *Vittaladas Jagannathadas and Another Vs. The Regional Provident Fund Commissioner, Madras and Another*, . Sri Raghavachari cited to us a judgment of Srinivasan J. in *Devi Press Vs. Regional Provident Fund Commissioner, Madras and Another*, , in support of his argument. According to him, Srinivasan J. quashed the order of the Provident Fund Commissioner declining to afford infancy protection to the new concern. This is not a correct reading of the judgment. A perusal of the judgment establishes that the learned Judge declined to interfere with the order of the Provident Fund Commissioner requiring the owner of the press to contribute to the employees provident fund. What he quashed was the order in relation to administration charges. In his opinion those charges being meant to reimburse the department in respect of expenses of administration, and there being no administration involved during the period when the previous company was in liquidation, administration expenses could not be demanded. As regards the infancy protection this is what the learned Judge remarked at p. 299 (of Lab LJ): (at pp. 465-466 of AIR).

But that the dissolution took place a week or ten days before the issue of notification making the Act applicable to the printing industry is a patent fact. While in terms the business was not sold as a going concern to the petitioner-firm, in effect that was what was done. The entirety of the machinery, its accessories and the furnitures were taken over. The very factory and corporation licences were transferred in the name of the petitioner partnership. The fact that the claims of the workers vis-a-vis the old company were settled up to the date of the winding up or that the workers were re-employed by the petitioner partnership does not in any way touch upon the question as to the date on which the establishment came into existence. In truth, the old establishment continued, although in a the old establishment continued, although in a different name. If that is so, the date, on which the establishment came into existence, is not 25-1-1957, the date of the formation of the partnership and the carrying on of the business from that date, but the date on which the old Devi Press Ltd. came into existence. It should follow that the demand I so far as the contribution from 25-1-1957 is concerned, that demand was rightly made, the petitioner-firm not being entitled to the protection of S. 16 of the Act.

It is manifest that the learned Judge thought that the firm was not entitled to protection under S. 16 of the Act from the date it took over the concern since the concern or the establishment as such came into existence long before. So it is needless to say that the decision in Devi Press Vs. Regional Provident Fund Commissioner, Madras and Another, on which great reliance was placed by Sri Raghavachari is of no avail to him. On the other hand, that case furnishes an effective answer to his contention.

(9) In fact, in Sri Varadarajaswami Transports (Pvt.) Ltd. Vs. Regional Provident Fund Commissioner, Madras and Another, , Srinivasan J.

referring to Devi Press Vs. Regional Provident Fund Commissioner, Madras and Another, stated,

and in somewhat analogous circumstances the contention that a new establishment had come into existence was rejected.

So Sri Varadarajaswami Transports (Pvt.) Ltd. Vs. Regional Provident Fund Commissioner, Madras and Another, , is another ruling against the appellant.

(10) Our conclusion gains support from a number of decided cases. In *Nazeena Traders (P) Ltd. and Others Vs. Regional Provident Fund*

Commissioner, Hyderabad and Others, one of the contentions raised was since the petitioner had taken on lease the cinema theatre on a particular

date he has entitled to have a further protection under S. 16(b) from the date of his lease. This was repelled by a Division Bench of the Andhra

Pradesh High Court in these words (at page 213):

This section contemplates the postponement of the application of the Act only to establishments and not to the persons connected with the

management, the object of the provision being to afford protection to the industries subjected to the obligations imposed by the Act in their infancy.

The legislature seems to have thought that these industries would establish themselves on a firm basis within 3 or 5 years as the case may be and

that thereafter they will be in a position to meet the demands of the Act.

A change of management of an establishment does not attract this section, since that does not amount to starting a new establishment and

consequently, it could not invoke the period of protection afresh from the date of the lease".

(11) In the same trend of thought are the following decisions: *Robindra Textile Mills Vs. Secretary, Ministry of Labour, Govt. of India, New Delhi*

and *Another, ; Hindustan Electric Co. Ltd. Vs. Regional Provident Fund Commissioner and Another, ; Bharat Board Mills Ltd. Vs. The Regional*

Provident Fund Commissioner and Others, ; Vegetable Products Ltd. Vs. Regional Provident Fund Commissioner and Others, , Jamnadas v. R.

P. F. Commissioner, West Bengal, AIR 1963 Cal 513 and Kunnath Textiles Vs. Regional Provident Fund Commissioner, . The view of the

Kerala High Court is also in accord with the principles enunciated by us and by the Bench of the Calcutta High Court. The decision of the Mysore

High Court rendered in *Pamadi Subbarama Chetti Vs. Mirza Zawar Ali*, is not of much assistance as the facts there are quite dissimilar to the

present one. That being so it is not necessary to consider the correctness or otherwise of that decision.

(12) It follows that what is established by the statutory provisions of the decided cases is that the exemption is available to the organisation or

establishment itself as such and not to the owner or the lessee or the manager

thereof. It cannot be postulated that each time there is a change of hands a new establishment has been set up. A mere change of hands would not clothe the establishment with newness. That being so, we do not think that any exception could be taken to the order under appeal. It follows that the judgment of Srinivasan J should be upheld. The appeal is dismissed with cost. Advocate's fee Rs. 100.

EJ/HGP/D.V.C

(13) Appeal dismissed.