(1964) 01 MAD CK 0029

In the Madras High Court

Case No : Writ Petition No. 1474 of 1961

R.L. Sahni and Co. APPELLANT

Vs

Union of India (UOI) and Another RESPONDENT

Date of Decision : 06-01-1964

Acts Referred:

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

Citation : AIR 1964 Mad 451 : (1964) 9 FLR 184 : (1964) 77 LW 406

Hon'ble Judges : Srinivasan, J

Bench : Single Bench

Advocate : N.C. Raghavachari, for the Appellant; K.S. Bhaktavatsalu and S. Mohan for Addl. Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Srinivasan, J.—The short question that arises is whether the petitioner establishment is entitled to the protection of Section 16 of the

Employees'' Provident Funds Act. Generally stated, this Act makes the employers liable to pay certain amounts towards the provident fund of the

employees. Section 16 of the Art, however, makes the Act inapplicable to any establishment ""employing 50 or more persons, or 20 or more but

loss than 50 persons, until the expiry of three years in the case of the former and five years in the case of the latter from the date on which the

establishment is or has been set up."" It is seen from this provision that in the case of an establishment liability to pay any contribution towards the

employees'' provident fund is postponed for a period of time from the date when it was set up and the question that I have to decide is whether the

petitioner establishment is entitled to this ''infancy protection"", as it is called.

2. The petitioner company was incorporated under the Indian Companies Act in.

April 1959. The object of the company was the tailing on lease

of the building and equipment known as the ''Rajkumari theatre'' from the owner thereof. Previously, this building had been leased by this owner to

one Om Prakash Gupta. That lease expired and thereafter by instituting proceedings in the High Court, the owner obtained possession from the

lessee. The petitioner company was formed for the purpose of starting cine exhibition in this theatre. lease was duly executed and thereafter the

petitions company spent considerable Slims of money for improving this theatre with new furniture, and started cinema shows under the name and

style of ""Sahani Cinemas This business has been carried on with effect from 16-6-1950.

3. The Regional Provident Fund Commissioner called upon the petitioner to make contribution to the employees'' provident fund. The: petitioner

contended has since the company newly started business only with effect from 16-6-1960, the Act did not apply. The Regional Provident Fund

Commissioner, however, took the view that the establishment, namely, the theatre in question had been in existence for a number of years and that

the mere fact that the petitioner company had taken a lease thereof did not mean that a new establishment had come into existence and insisted

upon the payment of contribution. It is in these circumstances that the petitioner has come to this court challenging the validity of the demand.

4. On behalf of the respondents, the Union of India and the"" Regional Provident Fund Commissioner, it is stated that the Rajkumari theatres as an

establishment had been in existence for more than five years prior to the coming into force of the Employees'' Provident Funds Act. It is claimed

that u/s 1 Sub-section (3) of the? Act, Government have issued a notification extending the provisions of the Act to cinemas, including preview

theatres and other establishments associated with film production, film distribution, and film processing laboratories. The Rajkumari theatres, it is

stated, is an establishment employing more than 20 persons, and it has come into existence for the purpose of exhibiting films. The contention that

because the petitioner firm came into existence in 1959, it ought to be regarded as a new concern entitled to the protection u/s 16 is resisted. The

theatre, so it is contended, has already been established, and it has merely been re-started under a new lease arrangement by the petitioner, and in that view, if is urged that Section 16 does not apply.

5. Mr. N. C Raghavachari, learned counsel for fir petitioner, claims that the protection is intended to be given to the employer, and where a new

employer comes into existence for the first time, the establishment in respect of which the protection is granted is the one donated by the employer.

It is claimed, that the mere building along with the equipment, cannot constitute an establishment, and that it must necessarily include the personnel

in charge of and operating the establishment. In that view, therefore, it is contended that the establishment to which the protection is available is the

petitioner firm, and it cannot be disputed that the petitioner company came into existence only in 1959, or that it started functioning only in I960,

the provisions of the Act cannot apply.

6. The matter is bereft of any direct authority, and has to be examined from first principles alone. Unfortunately, the expression ''establishment'' is

not defined. ""Employer"" has been defined in relation to an establishment which is a factory and also in relation to any other establishment.

Employee"" means any person who is employed in connection with the work of an establishment. Similar expressions use the word ""establishment

without there being any particular definition of the expression ''establishment''. The question will have, therefore, to be decided whether the

establishment that we are concerned with here is the establishment consisting of the theatre building, its equipment, and other provisions for the

screening of the films, or whether it means the organisation set up by this petitioner for taking a lease of the theatre. If it is the former, then,

obviously, the protection cannot apply, while if it is the latter, the petitioner would be entitled to the protection.

7. The argument of Mr. Raghavachari, learned counsel for the petitioner, that Section 16 is intended for the) benefit of employer is no doubt in a

sense true. An establishment which comes into existence for the first time is undoubtedly granted protection till it is able to attain financial stability.

But, that cannot ignore the fact that the Act as a whole is intended to provide for the benefit of the employees, and for some security in the matter

of their employment.

8. Certain decisions have been cited on behalf of the petitioner. All of these decisions relate to factories. In Vegetable Products Ltd. Vs. Regional

Provident Fund Commissioner and Others, , a single judge of the Calcutta High Court held that for the purpose of determining whether the

exemption u/s 16 of the Act'' available, it is the factory itself that has to be considered and not the owner of the factory. It was pointed out that

each time the factory changes hands it cannot be said that it was newly established. In such a contingency, the facts of each case will have to be

scrutinised, the lapse of time, the conduct of the parties, the intention of the transferor and the transferee and all the surrounding circumstances will

have to be taken into account before deciding, whether mere change of ownership would or would not affect the continuity of the factory.

In Jay Bharat Woollen and Silk Mills v. R. P. F., Commr. Punjab, 1963 2 LLJ 21 (Punj) a factory which was run as a proprietary family concern

became divided at a partition some of the looms and machineries being allotted to one member. Subsequently, manufacture was carried on in the

same premises by a partnership firm. The question arose whether the starting point for determination of the exemption u/s 16 of the Act should be

the date on which the factory was started by the partnership firm. This contention was rejected, the learned Judges holding that the petitioner was

not a new establishment which was entitled to the protection. Neither of these cases, however, gives any direct assistance. These are cases of

factories, which were engaged, in the manufacture of the goods, and a mere change of ownership of the factory could not obviously lead to the

result that the factory, regarded as an establishment, was set up for the first time under the changed ownership.

9. Learned counsel for the petitioner has relied upon a decision of the Mysore High Court in P. Subbarama Chetty v. Mirza Zewar Ali, 1959 2

LLJ 524 : AIR 1960 Mys 14. In that case, a partnership firm was running a factory to which the provisions of the ''Employees'' Provident Funds

Act applied. On account of loss, the factory was closed down, and the partnership business, including all its assets and liabilities, was divided

among the partners under a registered dissolution deed. One of the partners was allotted some pieces of machinery and a few looms. The

Provident fund accounts were closed and the provident fund amounts were disbursed to the concerned employees. After some time, one of the

partners started the factory under the old name in a portion of the premises with the help of the few looms allotted to his share. He was asked for contribution under the Employees'' ""Provident Funds Act, and on failure to make the contribution, he was prosecuted. The employer relied upon

Section 16 of the Act, and the question arose whether in the circumstances, it was a new establishment entitled to the protection. The learned

Judge had no difficulty in reaching the conclusion that so long as the dissolution of the original partnership was not mala fide and the business of the

factory came to an end, the assets of the factory being divided, one of the partners, to whom some of the assets of the factory had been allotted,

could start a business afresh. The view was taken that it was a new establishment entitled to the protection. ;

10. As I stated, none of the decisions gives any direct assistance, but they are certainly useful by way of analogy. It seems to me that looking at the

matter broadly, where an establishment, such as a factory, has been set up and the owner of the factory does not run the business on his own but

chooses to lease the factory from time to time, every fresh lease cannot give rise to the seating of the factory afresh. The case may undoubtedly be

different if the factory itself was closed down for some reason or other and it is started afresh under certain circumstances. Equally, it seems to me

that the establishment here is the organisation which has brought into existence the cinema theatre along with the equipment and other amenities for

the exhibition of films. That is being leased from time to time. The mere fact that there is a new lessee at different points of time does not mean that

the establishment of the cinema theatre comes into existence each time a new lease is created.

Learned counsel for the petitioner argues that the lessee will have to take a licence from the appropriate authorities in order to enable him to screen

pictures and that without such a licence he could not carry on the business. That does not appear to me to be a material circumstance to determine

when the establishment of the cinema was set up. In a manner of speaking, the cinema theatre may be likened to a factory which has the necessary

equipment for the purpose for which it was brought into existence, and that it is the hand of A or B that actually fulfils that object has no real

relevance to the point of time when the establishment can be deemed to have been, set up. I am accordingly satisfied that the view taken by the

Regional Provident Fund Commissioner is correct in the circumstances of the case. The petition fails and is dismissed, but there will be no order as to costs.